THE LEIPZIG TRIALS

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WITH AN INTRODUCTION BY

SIR ERNEST POLLOCK, K.C., M.P.

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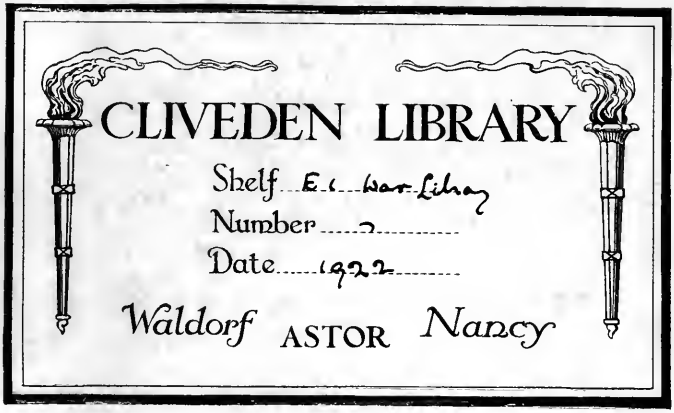
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THE LEIPZIG TRIALS

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AN ACCOUNT OF THE WAR CRIMINALS' TRIALS AND A STUDY OF GERMAN MENTALITY

BY

CLAUD MULLINS

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WITH AN INTRODUCTION BY

SIR ERNEST POLLOCK, K.B.E., K.C., M.P.

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TO MY BROTHER

JOHN OLLIS MULLINS

WHO DIED FOR ENGLAND, 1915

INTRODUCTION

During the war no demand was more rightly made, or more constantly sustained, than that those who were guilty of crimes against the Laws of War and Humanity, both on land and sea, should be brought to justice. The demand was not confined to our own country. In the words of the notice issued by the French Government on 5th October, 1918, "acts so contrary to International Law, and to the very principles of human civilisation, should not go unpunished." And as Monsieur Louis Barthou said on 3rd November, 1917, "There must be punishment, and it must be swift."

When hostilities ceased on 11th November, 1918, this demand became insistent, and the Attorney-General of the day, now the Lord Chancellor (Viscount Birkenhead), set up a strong committee of lawyers to examine the whole matter, as well the legal position as the charges themselves and the evidence available to support them, and to report to him upon the steps to be taken to ensure that the "War Criminals," as they then had come to be

termed, should be brought to justice. At the Peace Conference a commission was set up to report to the conference for the same purpose. At this commission, representatives of all the allied countries attended, and a report upon the violations of the Laws and Customs of War was duly made, with the result that Articles 228-230 were inserted in the Treaty of Versailles, which was signed upon 28th June, 1919.

At one of the earliest sittings of that commission in Paris, on 7th February, 1919, British delegates pointed out that, unless immediate steps were taken to arrest the War Criminals, the labours of the commission might prove fruitless. A suggestion was urged that a condition should be inserted in the next extension of the Armistice, whereby the enemy should undertake to hand over for detention and trial those persons whose names should be communicated from time to time. This suggestion of the British delegates was accepted by most, indeed by almost all, but not quite all, of the other countries represented on the commission. The matter was considered by the Supreme Council, but unfortunately no means were devised whereby, at that stage of the Peace negotiations, it was found possible to take speedy action.

The German representatives signed the Treaty

of Peace at Versailles on 28th June, 1919. Owing to the delay caused by the illness of President Wilson and the working of the American Constitution, the Treaty did not come into force as between Great Britain and Germany until the 10th January, 1920. It was then, and not till then, that the clauses of the Treaty, under which Military Tribunals were to try persons accused of having committed acts of violation against the Laws and Customs of War, could be brought into operation.

Those who were anxious to secure the trial of the War Criminals chafed at this delay. They appreciated the difficulties which the passage of time added to those already inherent in the matter. The delay gave the opportunity for escape to those who must have been conscious that their names would figure on any list presented under Article 228. The repatriation of the prisoners of war dispersed among the many Dominions of the Crown the men who had come from every part of the globe to fight for the great cause of civilisation; and this, as well as the demobilisation of the fighting forces, all rendered the task of collecting the evidence and securing the attendance of witnesses before any tribunal, tenfold more difficult.

As I said above, the demand was that the War Criminals should be brought to justice. No doubt

if the war had been continued for the purpose—at the cost of additional lives and treasure—it would have been possible to have insisted that a number of those against whom allegations were freely made should have been surrendered and tried off-hand at a drum-head court-martial. Or, if the surrender of the same criminals had been demanded as a condition of the extension of the Armistice, and some sort of trial immediately improvised, a number of those against whom the charges were made could have been summarily convicted and punished. Once, however, the clauses had been inserted in the Treaty, it was essential to adhere to their terms; more especially as those against whom they were directed were charged with having disregarded not only the usages of war, but also the conventions laboriously worked out and assented to by civilised nations—whether at Geneva, or at the Hague.

Immediately after the Treaty came into force, in January, 1920, the list of those demanded by the Allies was prepared, and ultimately submitted to the Germans. That list was a long one, not unnaturally so, because the tale of barbarities against Frenchmen, Belgians, the British and Italians, was itself all too long.

The German Government represented, and their representations were accepted by the Supreme

Council, that if they attempted to arrest many of those whose names figured upon the list, it would bring the Government—none too stable—to the ground. They made a counter proposition that they should have the evidence submitted to them, and try before the Supreme Court of Leipzig those against whom the charges were made and whom they undertook to arrest and bring to trial. The Allies tentatively accepted this proposal and presented a list of forty-five cases to be tried by way of experiment before the Supreme Court. They made it plain, however, that though they would supply the evidence they left full responsibility to the Germans —" sans intervenir dans la procédure, les poursuites et le jugement, de manière à laisser au Gouvernement allemand sa pleine et entière responsabilité " were the unequivocal terms used in the reply by the Allies. This point is of some importance because it has been suggested that the Allies were in a position to direct or interfere with the course of the Court at Leipzig. No self-respecting Court could be asked to allow such interference; and for foreigners to intervene before a tribunal, with whose practice and procedure they were not familiar, would have been to court disaster.

The British cases, six in all, were ready first. They were chosen as representative of the charges

brought against the War Criminals. Three of them were charges against the commanders of submarines. Three cases related to prison camps. These were selected because they were free from the complications which occur in some of the other prison camp cases. Where a succession of commandants, each appointed for a short time, follow each other, it is not easy from the evidence of the witnesses, who had no reasonable opportunity under the circumstances of taking note of the date or person in command when their miseries were suffered, to identify the officer responsible. Heynen, Müller, and Robert Neumann in the prison camp cases were all convicted, as well as Dithmar and Boldt, who were arrested by the Germans themselves for complicity in the outrage committed by Lieutenant Patzig in firing on the life-boats of the s.s. *Llandovery Castle.*

The proceedings of the Supreme Court at Leipzig have been appraised in this country somewhat superficially by those who took note only of the sentences. These sentences were, to our estimate, far too light; but as the following pages show, they must be estimated according to their values in Germany. To the Germans a sentence of imprisonment upon an officer carries a special stigma, and imports a blot upon the service to which

he belongs. No sentence could be adequate or expiate the outrages committed; no time will efface the memory of their sufferings from those who underwent them. If we had sought vengeance, no system of trial or punishment would have satisfied our thirst for it. But as I have said before, the demand was for justice—for British justice, under which the defendant should have an opportunity of stating his case, and be condemned only after a fair hearing —the justice that reaches its end "pede poena claudo."

Those who were present in Court at Leipzig are able to form a better estimate of the effect produced at the trials upon the public who attended them. No newspaper report can adequately convey the sensation which was produced from time to time by the Court accepting the evidence of the British witnesses as trustworthy, and the President turning short upon the prisoner for his answer: "Here's a respectable young man; did you hit him?" The prisoner: "I don't remember." The President: "Then if you don't remember, I don't believe you." Or again, from the President's retort to the counsel, in the Boldt and Dithmar case, who suggested, upon hearing the evidence that Meissner, the best gun-layer, now dead, had been summoned to the deck of the submarine, that it was probably he who had

fired the gun and did the outrage—" Don't imagine that you are going to get rid of this terrible affair by trying to put the blame upon a dead man; that won't do." Again, to the counsel in the Heynen case, who suggested in the evidence as to a blow given to one of the prisoners that there was a discrepancy in the evidence, one of the witnesses having said that he was hit when on the top of a ladder and the other at the bottom, the President said shortly that it did not matter whether he was hit at the top of the ladder or at the bottom of the ladder, " The question is, was he hit? and I believe he was." I watched the German military representatives as the President in Heynen's case said in the course of his oral judgment: " One cannot help acknowledging that here it is a case of extremely rough acts of brutality, aggravated by the fact that they were perpetrated against defenceless prisoners, against whom one should have acted in the most proper manner if the good reputation of the German Army and the respect of the German nation as a nation of culture were to be upheld." Their depression indicated that they appreciated the disgrace brought upon their army.

These and similar incidents had their effect on the Germans who attended the trials in Court and upon the Germans throughout the country.

For my own part I was alike disappointed and surprised that longer sentences were not administered in some of the cases. With the assistance of Mr Claud Mullins, the writer of this book, and others, I was able to follow the trials accurately and minutely. I owe much to his intimate acquaintance with the German language, and his accurate and pains-taking scrutiny of the German code. Thus equipped I can say, as one who was present at most of the trials of the British cases, that it has been established before the Supreme Court of Germany—equivalent to our House of Lords or Privy Council—that the charges that were made against the Germans in the course of the war were well founded, that the evidence of the British witnesses who gave evidence at the trials was accepted as trustworthy, and that the convictions secured in Germany itself—few though the cases tried have been—have resulted in an admission of guilt. The true object of a conviction and punishment is that it shall be a deterrent against the repetition of similar acts. If the trials had taken place in London, the probability is that the Germans would have asserted that the trials were unfair, and built a memorial in Berlin to those who were the subjects of them. Now it can be said before the whole world that it has been proved in certain representative cases that

the Germans were guilty of breaches of the Laws of War and Humanity.

It is the purpose of this book to give an accurate record of these cases. Those who are prepared after considering the following pages to look for the permanent results of the trials, and not to form hasty or superficial judgments, will perhaps share the view that so far no small achievement has been accomplished, and that, even if in a few cases only, justice has been asserted. Probably as the war recedes this achievement will stand out as more important than at the present time, for, though the terms of imprisonment, measured by whatever standard, must pass away by lapse of time, the effect of the convictions will stand for ever.

E. M. P.

PREFACE

This book has been written in an endeavour to explain the efforts made after the Great War to re-establish the Law and the principles of Humanity. Appalling acts were committed during the war which shocked the conscience of the world, and there was a widespread feeling when the war ended that an attempt should be made to punish individual wrong-doers. Public opinion, both British and among England's Allies, can never be indifferent to the trials of men who were guilty of atrocities during the Great War, and I hope, therefore, that it will be useful to put on permanent record a full description of what actually took place at Leipzig in 1921.

But the punishment of individual wrong-doers is only part, in my opinion only a secondary part, of the vindication of Law and Humanity. Germany's war criminals were part of the system which produced and encouraged them, and the condemnation of that system is of greater importance than the fate of any individual wrong-doers. In order

to understand that system and to understand the extent and manner of its condemnation it is necessary to know Germany well, to know the mentality of the German people before, during, and after the war.

Before the war I lived and travelled in Germany at various times, and had many opportunities of getting to know the German people. As regards the trials at Leipzig, I was present at all the trials of the cases submitted by the British Government and, as happily I can speak and understand the German language, I was able to follow the proceedings closely throughout. At the trials that were held at the instance of our Allies, no British lawyer was present, but while in Leipzig I had opportunities of meeting the Belgian and French lawyers who formed the legal missions from their respective countries and of discussing their cases with them. Later I was able to discuss these trials with both English press representatives and German officials who had been present; in addition, I have obtained copies of the judgments of the Court in these cases, and these are included in this book.

The charges have often been made that the Treaty of Versailles showed an absence of idealism on the part of those who framed it and that the Peace Conference of 1919 concentrated more on revenge

for the past than on reconstruction for the future. I have never believed these charges to be well-founded, and certainly the one part of the Treaty with which I have had to deal leads me to believe in them less than ever. The War Criminals' Trials were demanded by an angry public rather than by statesmen or the fighting services. Had the public opinion of 1919 had its way, the trials might have presented a grim spectacle of which future generations would be ashamed. But, thanks to the statesmen and the lawyers, both at the Peace Conference and afterwards, a public yearning for revenge was converted into a real demonstration of the majesty of right and of the power of law.

At the time of the trials, public opinion was influenced mainly by the leniency of the sentences which the Leipzig Court passed upon the men whom it convicted. The results of the trials drew both the bitter criticism of *The Times* and other newspapers, and the sarcastic humour of *Punch*. Those who read this book will at least have an opportunity of judging the trials as a whole; they will be able to see to what extent individual wrong-doers received their deserts and to what extent brutality as a system in waging war was condemned. The Leipzig trials may not have fulfilled the expectations of the public which demanded them when the Armistice came, but

they are of very real importance and value none the less. They have made History.

Some of those who read this book may be impatient at my effort to judge the trials impartially. To them I would say that I have no reason to be tender towards Germany or tolerant of the German spirit which produced the war; my home and my career will ever bear the scars of the war, and for both I consider that Germany is responsible. I have no patience with those who fail to realise the reality of hatred. But at the same time I cannot join with those who fail to realise that we must look to the future rather than to the past. The world can only progress by endeavouring to get back to real peace conditions. Human nature being what it is, punishment is necessary, and I have never sympathised with those who would eliminate punishment for offences in making or conducting war. But punishment has always to be imposed according to the principles of justice and with due regard to the realities of life and to the interests of posterity.

Sir Ernest Pollock, K.C., M.P., has been good enough to contribute an introduction to this book. As Solicitor-General he led the British Mission at the Leipzig trials, and by his firm, but ever chivalrous, handling of a most difficult situation he

earned both the gratitude of British, and the respect of German, public opinion. His leadership made one more than ever proud to be British. I desire, however, to emphasise that this book is in no sense official. Sir Ernest Pollock is not responsible in any way for opinions that I have expressed. I have written this book purely as an independent individual. I alone am responsible.

My thanks are due to the editor of the *Fortnightly Review* for permission to incorporate in this book parts of an article which I wrote for his issue of September, 1921; to Herrn K. von Tippelskirch, and also to Miss V. M. de Gruchy for much help in preparing this book and passing it through the press.

C. M.

Goldsmith Building,
Temple, E.C.4.,
November, 1921.

CONTENTS

CHAPTER I: THE PRELIMINARIES

The War Criminals' Trials that were held at Leipzig between 23rd May and 16th July, 1921, were very different from the trials expected by the public after the Armistice of 11th November, 1918, and during the General Election which followed shortly afterwards. Certainly at that time nobody expected either that two and a half years would elapse before the accused men would be brought to justice or that they would be tried before a German Court.

In the years that elapsed between the Armistice and the trials war passions abated to a considerable extent. We British people especially have always shown an inability to hate for any length of time. When we fight, we fight hard, but in our wars and afterwards we are influenced by the traditions of sportsmanship for which we are known all the world over. It comes naturally to us to shake hands after a fight. After such a war as that of 1914-18 shaking hands was at first next to impossible, but the instincts of sportsmen were operating in us none the less. Montesquieu wrote of us that " Les Anglais vous font peu de politesses, mais jamais d'impolitesses." I doubt if the former is really

true, but the latter certainly is, and it applies to our relations with friend and foe alike. In many individuals hatred remained predominant long after the war, but in the nation at large hatred died down quickly and, even if contempt took its place, there was a very general feeling that there must be justice even for those who were recently our bitterest national enemies.

The question of trying the War Criminals was one in which our national instincts were bound to show themselves in marked degree. The Treaty of Versailles had provided that any German who was accused by any of the Allies of having violated the laws and customs of war should be handed over and tried by the Allies themselves. When these clauses of the Treaty came to be put into operation, it was realised that serious difficulties must inevitably present themselves if they were carried out to the letter. There was also a feeling among some that the procedure outlined in the Treaty offended our instinctive national craving for fair-play, and that it should be regarded at best as a last resort. This feeling did not in any way imply a weakening in the national determination to re-establish the principles of humanity or a desire that the accused men should be left free, but it was symptomatic of an underlying fear lest the very human desire for revenge should lead us to infringe our highest standards of justice.

The actual wording of the clauses in the Treaty

of Versailles which dealt with the War Criminals' Trials was as follows:

ARTICLE 228

The German Government recognises the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies. The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office, or employment which they held under the German authorities.

ARTICLE 229

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power. Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned. In

every case the accused will be entitled to name his own counsel.

ARTICLE 230

The German Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility.

Political conditions in Germany were so unsettled in 1919-20 that it was, in fact, impossible for immediate steps to be taken to carry out these provisions. When the lawyers were able to settle down to the task, many practical difficulties presented themselves. The German Government frankly said that it was impracticable for it to arrest all the men whose names were on the lists—those lists included many men who were, and always will be, national heroes to the German public. Then there were difficulties of procedure, due to the widely differing judicial systems of England and her Allies. So early in 1920 the Allies, at the suggestion of this country, agreed to accept an offer by Germany to try a selected number of cases before a German Court. This arrangement was conditional, for the Allies retained the right if necessary to repudiate these German trials and to demand the full execution of Article 228.

Forty-five cases were selected, seven of these being British prosecutions. The German Government was unable to arrest three of these seven men. Commander Patzig, commander of the submarine which sank the hospital ship *Llandovery Castle*, lived in Dantzig, and by the Treaty of Versailles Dantzig ceased to be a German town. Inquiries were made in Germany, but Commander Patzig could not be found. Lieutenant-Commander Werner, commander of the submarine which sank s.s. *Torrington*, and Sergeant Trienke, who was charged with Private Neumann with having ill-treated British prisoners of war, similarly could not be found. Warrants were issued against these men by the German Government, and any property which they held in Germany was sequestrated. After the first four trials had been held the German Government announced that they had arrested Lieutenants Dithmar and Boldt, junior officers on Commander Patzig's submarine, and requested the British Government to supply the evidence necessary to charge them with murder.

The War Criminals' Trials of 1921 will never be understood unless it is realised that it was decided that a War Criminals' trial should be a trial in the fullest sense of the word. When these trials were first mooted no doubt an excited public had visions of drum-head courts-martial which would speedily sentence hundreds of accused Germans, many of

whom had played very prominent parts against us during the war. But popular passions are never compatible with a careful thinking out of any problem of the day. In 1918 the public generally expected wholesale convictions and probably life-long sentences. Florence Nightingale once wrote of one of her friends, " She does not want to hear facts; she wants to be enthusiastic." The British public was in this mood in 1918, and in 1921 there were still many who were living in the atmosphere of 1918. Nietzsche wrote the cruel words : " People are mostly sane, but peoples mostly insane." Carlyle once wrote rather the opposite, but Nietzsche was nearer to the truth. We were all unbalanced during the war; had we been otherwise we could never have won. But the atmosphere necessary for waging war is very different from the atmosphere in which alone the scales of justice can be evenly held. In Germany one of the best-known poems is Schiller's " Song of the Bell," and in this Schiller wrote the following lines:

" Gefährlich ist's den Leu zu wecken,
Verderblich ist des Tigers Zahn;
Jedoch der schrecklichste der Schrecken,
Das ist der Mensch in seinem Wahn."[1]

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[1] " There is danger in awakening the lion; the tiger's tooth does injury. Yet the greatest of all terrors comes from mankind when it raves."

Popular passions must abate if justice is to be done. To be convinced of a man's guilt because one hates him is to set aside the fundamental principle of justice.

Thus, when endeavouring to understand the War Trials at Leipzig, the essential fact to be realised is that all the preparations for them and the trials themselves were conducted on the assumption that the ordinary principles of criminal courts would be observed. In fact, these trials were different from ordinary criminal trials mainly in that the accused men and the principal witnesses for their prosecution were of different nationalities. So far as the fundamental principles of criminal procedure were concerned, there was no difference between the War Criminals' trials and any other trials.

This fact had very important consequences. The cases had to be prepared with just the same amount of care and precision as is given to a criminal trial in the British Courts. They had also to be selected with every regard to the laws of evidence. It had always to be borne in mind that the accused men, however convinced people might be of their guilt, were innocent until they had been proved guilty by evidence, given in open Court against them, which would convince the Court of their guilt.

With the way in which the British evidence was given I will deal later. But I would here emphasise that the acceptance of these principles severely

limited the authorities in their selection and preparation of the British cases. The immediate result was that it was impossible to proceed against many of the worst offenders. It is very difficult at all times to prove crimes which happened three, five or even six years ago, but the difficulties are far greater when the accused men, when they committed the acts complained of, were enemies, shut off from all means of communication. At the time of the trials there was much grumbling in England because the British cases, unlike the French, did not include Generals or Admirals. I had no part in the selection of the British cases, being overseas at the time, but I am convinced that the authorities made their selection with their eyes mainly fixed on the ordinary laws of evidence.

No one can read the judgment in the case of Captain Müller, for instance (set out in Chapter III), without feeling that for the appalling conditions of the prisoners' camp at Flavy-le-Martel it was the German Army Command and not Captain Müller that was mainly responsible. The Command insisted that the prisoners should be kept in that unhealthy locality, close to the firing-line, so that their labour could be utilised for essential military work. This was illegal and, could a German General have been proved to have issued this order, he would probably have been brought to trial. But it is exceedingly difficult, if not impossible, for Englishmen to prove

the conduct of ex-enemy Generals according to the standards of proof obtaining in British Courts. The British soldiers and sailors, upon whom the selecting authorities were dependent for evidence, only came into contact with German subordinates. No Englishman could speak of what took place at the German War Councils, and the actual orders which were issued by German Generals did not reach our soldiers.

Those who read the judgments of the Court in the French case against Generals von Schack and Kruska will understand this difficulty. Frenchmen, ex-prisoners, had spoken of appalling medical conditions in a prison camp, and one can have little doubt that the facts to which they spoke from their own knowledge were true. Yet the Court refused to convict the Generals. " Several witnesses have spoken of offences," it is stated in the judgment, " which were very serious for them, but for which no Camp Commandant can be held criminally responsible. . . . He cannot be everywhere. . . . If these charges are true, the doctors were to blame." There was also an appalling case in which British prisoners were transferred to Russia by way of reprisals for an alleged breach of the laws of war by England. Conditions of almost incredible cruelty existed and no other conclusion is possible but that these men were deliberately sent to Russia to die. But the case never resulted in a

trial, presumably because of the difficulties of proof against any individual.

It is a principle of British justice that punishment can only be awarded for the personal acts of the accused, proved in open Court against him. This principle is our constitutional safeguard; if a policeman arrests me wrongfully, I proceed against him and not against the official at Scotland Yard or Whitehall who originally made the mistake. The subordinate is condemned for his own acts and by his condemnation the system, of which he forms part, is condemned also. This principle, with all its limitations, was adopted in the War Criminals' trials.

By proceeding on this principle, it is obvious that in most cases all chances of sensational punishments were abandoned, for a Court, whatever be its nationality, will always take into consideration the fact that a subordinate is not wholly responsible. This is, to my mind, the main reason why the sentences awarded by the German Supreme Court were so lenient. But of this more will be said in Chapter VI.

To many laymen it may seem wrong that these "juridical niceties" should have saved senior officers from condemnation or should have enabled guilty subordinates to escape with lenient punishments. But any lawyer will understand the reasons for this policy, and I doubt if the general public

would really have appreciated a system of " Direct Action " trials, in which the laws of evidence were ignored and which were in fact automatic registrations of verdicts. The real object of the War Criminals' Trials was, it must never be forgotten, primarily the condemnation of a brutal and inhuman system, not the punishment of individual offenders. This condemnation was amply secured.

In the preparation of the British cases no effort was spared to collect evidence on every relevant point. As an instance I would recall the fact that three weeks before the *Llandovery Castle* trial essential witnesses were scattered over sea and land thousands of miles away. Four of them were either in the Dominions or were serving on British ships in distant seas. Major Lyon, a doctor on board the ship at the time of its sinking, lived in the West of Canada, and his address was not known in London when the trial was announced. A Marconi operator, who had also been on the ship, was on the point of sailing from New York to South America. There was some very fine staff work in Whitehall, and these men were collected and got to Leipzig. Major Lyon only arrived in Liverpool after the trial had opened, and the Court adjourned the trial for a day in order that his evidence might be given. The work of solicitors seldom comes before the public eye, but it would be ungracious not to mention the fine work done by the Procurator General's Depart-

ment, and especially by Mr Raymond Woods, in working up and organising these trials.

This account of the preliminary proceedings before the trials took place will explain the circumstances in which the trials were held. Before dealing in detail with the various cases that were tried, something should be said of the procedure adopted and of the German Court itself, and this will be the subject of the next chapter.

CHAPTER II: THE GERMAN COURT

The Court which tried the War Criminals was the Criminal Senate of the Imperial Court of Justice of Germany. In December, 1919, the German Parliament had passed a special law ("Reichsgesetzblatt," 1919, No. 247) to carry out the terms of the agreement with the Allies. This law was supplemented by two later Acts of March, 1920, and May, 1921 ("Reichsgesetzblatt," 1920, No. 53, and 1921, No. 51). These laws gave special jurisdiction to the Imperial Court of Justice, which is the highest Court in the land. This Court may fairly be compared with the Judicial Committee of the Privy Council, though it must be remembered that on the continent generally, judges, however responsible and however great their jurisdiction, have not the same high standing in public opinion as they have in our own country.

It had been arranged that the nation instigating the prosecution should send to the German State Attorney before the trial full details of the evidence to be given against the accused men, so that they might know the case which they had to answer.

In the Belgian and French cases there was a preliminary hearing before a local Belgian or French judge, but as regards the British cases the proofs were forwarded just as they had been taken down by the police officer who had collected the evidence. Under the special German laws formal preliminary inquiries were held in Germany, at which depositions were taken of all the German witnesses whom it was proposed to call. In a few instances it was impossible for British witnesses to go to Leipzig to give their evidence, so it was agreed that this evidence should be taken before the Chief Metropolitan Magistrate at Bow Street Police Court, German counsel being present to represent both the German State Attorney and the accused men. By another provision of the special German laws it was laid down that "when the State Attorney is of opinion that the facts do not justify an indictment, he may request a trial in order that the facts may be ascertained." This procedure is unusual, but in the circumstances it was useful. It was adopted in the British case against Captain Neumann, the commander of the submarine which sank the British hospital ship *Dover Castle*, and in most of the Allies' trials.

The system of judicial procedure prevailing on the continent differs in many essential points from that obtaining in England. In a British trial, the conduct of the case is left to prosecuting and

defending counsel, who call evidence at their discretion and explain their case to the Court; British judges know practically nothing of a case before the trial opens. In Germany, and in many other countries, the Court has received and examined all the proposed evidence before the trial; it decides before the trial whether the witnesses proposed shall be called and whether their evidence is relevant. Thus in the prosecution of Lieutenants Dithmar and Boldt (the case arising out of the sinking of the hospital ship *Llandovery Castle*), counsel for the defence had submitted to the Court some thirty proofs of witnesses who would give evidence directed to show that the British Navy generally had been guilty of atrocities in conducting sea warfare, and that the *Llandovery Castle* and other hospital ships had been used contrary to the provisions of International Law. Before the trial, the Court had intimated that this evidence was irrelevant, but counsel for the defence had pressed their claim to call this evidence and the Court had ruled that, while still of the same opinion, it could not exclude the evidence. The consequences of this will be referred to in the account of this trial given in Chapter IV.

The Presiding Judge has, then, read all the witnesses' proofs before the trial. He begins the proceedings by informing the accused what the charge against him is. The accused has the same

right as in English procedure of refusing to give evidence, but he cannot give evidence on oath, a privilege, if such it can be called, only available to an accused in our own Courts since 1898. In the German Court, if the accused decides to give evidence, the Presiding Judge examines him first. One of the first questions he asks him is whether he has ever been punished before, a question which must seem remarkable to anyone acquainted with the procedure of the British Criminal Courts, where the accused, under all circumstances and however black his record may be, can never be asked any such question until the charge upon which he is being arraigned has been decided. The judge then calls witnesses from the lists submitted by the State Attorney or by the defence in any order that he pleases. Having already read their proofs, he passes quickly over matters which he considers either already established or of minor importance. After the examination of a witness by the judge, the State Attorney, defending counsel and the accused himself are asked whether they have any further questions to put. If they have, such questions are put through the Presiding Judge or, with his permission, directly to the witness. Cross examination in the English sense of the word seems almost unknown; in the War Trials, at any rate, witnesses were never pressed severely, although, in many cases, it was obvious that they were giving their

evidence reluctantly and were saying a good deal less than they in fact knew. Both during and after the examination of the witnesses, the Presiding Judge repeatedly turns to the accused and asks him there and then to give his version of the incident of which evidence has been given. Both while witnesses are in the box and afterwards, the judge often recalls a previous witness to give his version of the same incident.

This procedure will strike every English lawyer as strange and dangerous. It places an enormous responsibility in the hands of the Presiding Judge. While listening to the proceedings in the Leipzig War Trials, I often felt that under such a system, if the judge happened to be biased, I should be pessimistic about my chances of being acquitted on any charge.

The German Court does not adhere to strict rules of evidence as do English Courts. Hearsay evidence seems to be given on both sides without objection and matters are considered which an English Court would consider irrelevant to the point at issue. Those who read the judgment in the case of Lieutenants Dithmar and Boldt will see that the Court more or less decided the guilt of Captain Patzig, the commander of the submarine, and that his conduct was subject to very severe comment; and this in spite of the fact that Patzig was not present and that proceedings against

him for his share in the atrocity might later be taken.

The proceedings in these War Trials reminded one rather of a Military Court of Inquiry or a Coroner's Inquest. The methods adopted were rough and ready. They were certainly expeditious; the trials lasted about a quarter of the time that an English Court would have required. In the trial of Private Neumann, twenty-five British witnesses gave their evidence, the evidence of three more British witnesses (given before the Chief Magistrate at Bow Street) was read, there were some twenty German witnesses, and yet the proceedings were concluded in two days.

The German Court consisted of seven judges with Dr Schmidt as their president. The trials were held in the big hall of the Imperial Courts of Justice, the same hall where, not long before the outbreak of war, two British lieutenants, Trench and Brandon, had been tried and condemned on a charge of spying in German naval harbours. The judges, who looked very dignified in their crimson robes and crimson berrettas, sat round a horseshoe table. At the end of the table, at the president's left, sat the German State Attorney and his assistant. At the other end, on the judge's right, sat the clerk of the Court. The witnesses gave their evidence inside the horseshoe, facing the Presiding Judge. At a separate table on the right, sat the

accused and his defending counsel. Facing them, on the judge's left, sat the British Mission[1] and, behind them, were a few representatives of the British press and representatives of the German Foreign Office and Ministry of Justice.

The witnesses, both English and German, were called into the Court at the opening of the trials; a roll-call was taken, and they were warned by the Presiding Judge that no feelings of prejudice or of national animosity must colour their evidence. They then left the Court and were called in one by one as the Presiding Judge determined. Behind the witnesses, sat the representatives of the German press and, behind them again, numerous rows were occupied by spectators. The acoustics of the hall were very bad and complaints were made even in the German papers. Above the back of the hall, there was a gallery and, at moments when the trials were specially interesting, both this gallery and the seats for spectators in the body of the hall were crowded with people. Before the trials, an appeal had been issued to the German public by some patriotic organisation that they should boycott the

[1] The British Mission included the following counsel: Sir Ernest Pollock, K.B.E., K.C., M.P. (Solicitor-General); Sir Ellis Hume-Williams, K.B.E., K.C., M.P.; Mr V. R. M. Gattie, C.B.E., and the author of this book, his functions being mainly those of interpreter. Mr Raymond Woods, C.B.E., solicitor, then of H.M. Procurator-General's Department, organised the Mission and attended the trials throughout. Mr J. B. Carson, of the British Embassy in Berlin, and Commander Chilcott, M.P., were also present.

trials as they were held to be a humiliation to German pride. None the less, there was always a considerable audience, and at times the big hall was packed to suffocation.

Never have trials taken place amid more difficult surroundings. The issues to be tried naturally aroused the deepest passions in Germany. The German newspapers were doing their worst to create an atmosphere unfavourable to judicial consideration. At the British trials of military officers, General von Fransecky attended the Court as Military Expert and thought fit to indulge in a full-blooded justification of what we Englishmen regard as the Prussian principle of force and brutality. The defending counsel, with one honourable exception, Dr Edgar Windmüller of Hamburg, all followed his example and indeed went a good deal further, for they introduced hatred and prejudice into their fiery speeches. They were often speaking to press and public rather than to the Court and, in the trial of Lieutenants Dithmar and Boldt, they were openly and severely rebuked by the President of the Court for doing so. No judges have ever had a more difficult task than to act judicially under such circumstances. Dr Schmidt and his colleagues had it in their power to become national heroes in the eyes of Germany's " Jingoes," the sections in Germany which still sympathise with the old régime. These sections were powerful still and the judges

could easily have won their applause by taking sides with their countrymen against the alien prosecutors. On the other hand, they could have earned, had they wished, the favour of the revolutionary element in Germany by giving vent to violent denunciations of Germany's pre-war military system. In fact they did neither.

At the time of the trials, *The Times* described them as " a travesty of justice " and the *Evening Standard* said that " Leipzig, from the Allies' point of view, has been a farce "; but I do not think that any Englishman who was present was of that opinion. However much we may criticise the judgments of the Court, and however much we may deplore their inadequacy from the point of view of jurisprudence, the trials were not a farce and the seven German judges endeavoured throughout to be true to the traditions of fairness and impartiality which are the pride of all judicial courts. To my mind this is a hopeful sign in these days when more and more international problems have to be settled by argument before judicial tribunals. As a lawyer myself, I felt and feel proud of the legal mind, which seeks justice even though the heavens fall.

When I first saw Dr Schmidt, a few minutes before the opening of the first trial, I confess that I was not optimistic. The face struck me as severe; the manner very formal and stiff. Like the German officials whom we had already met, Dr Schmidt was

obviously dreading the ordeal which awaited him. He would have been more than human if the prospect had not appalled him. But he quickly responded to the chivalrous note struck by Sir Ernest Pollock, K.C., the Solicitor-General, and an hour had not passed in Court before one saw the real man. The cloak of German formality and stiffness seemed to have disappeared when the judge donned his crimson robes.

It is a British characteristic to give honour where honour is due. Speaking for myself and of the trials which I witnessed, I say frankly that Dr Schmidt and his Court were fair. Fully neutral at the start, I learnt to respect them, and am convinced that they performed their difficult task without fear or favour. Personally I should be willing to be tried by Dr Schmidt on any charge, even on one which involved my word against that of a German.

Nothing showed the impartiality of Dr Schmidt more clearly than his reception of evidence in which complaints were made about the food given in the prison camps. We must remember that England had been blockading Germany; with perfect justice in the opinion of every Englishman. The Germans had been deprived of all luxuries and of many necessaries for years on end. Largely thanks to the blockade, Germany had lost the war. Now British ex-prisoners came back to Germany with complaints that they did not get coffee, etc., when, in fact, no-

body in Germany at that time had such things, and even at the time of the trials only the rich could afford them. Such complaints were, it is true, only incidental and formed but a very small part of the charges against the prison camp commandants, but they gave scope for the German press to jeer and for both the Military Expert and defending counsel to be sarcastic. Dr Schmidt would only have been human if he had lost his temper; he too had been deprived of coffee. But he remained serene and fully investigated the complaints about the food of the prisoners.

To give an impression of Dr Schmidt, let one instance be cited: A witness in one of the prison camp cases had spoken to having been hit by Neumann (a sentry) with the butt of his rifle. The judge turned to Neumann. "This is the man who flirted with women," said Neumann angrily, and he justified his brutality by the necessity for preventing so outrageous a breach of discipline. Imagine the scene. The prisoners had worked in a chemical factory; all the local German swains were at the war; human nature triumphed, and an Englishman, a handsome country lad, had made himself pleasant to a German woman working in the factory. To Neumann and to General von Fransecky this was a crime. Dr Schmidt merely smiled; he at least was a man, and not a military automaton. He understood human nature.

The strain upon Dr Schmidt in these trials must have been tremendous. Day by day, he bore a far greater burden than anyone else in Court. The sittings of the Court began at nine a.m. and usually continued till two; then at four the Court re-assembled and continued till six, seven, or even later. The strain upon us British was great, but we at least remained silent. Dr Schmidt was talking most of the time; he even himself administered the oath to the witnesses. When I saw him for the last time, after a month and a half of incessant War Trials, his face showed me what a strain there had been upon him.

As I have said, it had been arranged that before the trials opened the evidence against the accused should be forwarded to the German State Attorney. It was then for him either to frame an indictment or to take action under the special German law, quoted above. It is important to realise, when reading the judgments of the Court, that these indictments were prepared in Germany. In the indictments in the British cases there were several formal charges that the accused had insulted British prisoners by calling them " Schweinhund," etc. I cannot imagine an English prosecutor ever framing a criminal charge on grounds of abuse, or an English Court solemnly discussing whether such an insult is a crime. But of this more will be written in Chapter VI.

The German State Attorney at these trials was

Dr Ebermayer, a gaunt, able, and rather awe-inspiring man whom it was necessary to know in order to understand. He was a man of few words, and at first was very curt and apt to be cryptic, but, as he gained confidence in the British Mission, he became more open and human. His was a specially difficult task because it was for him to conduct the British cases, so far as the German procedure leaves the conduct of the case to the prosecution at all. It was for him, according to the ordinary criminal procedure in Germany, to ask for conviction or acquittal, and to suggest to the Court what sentence, if any, should be passed.

Under the special German Law of December, 1919, it was provided (Section 6) that " the injured party is entitled to take part in the proceedings as co-prosecutor. The Minister of Justice can permit other persons also to be present as co-prosecutors." On the arrival of the British Mission in Leipzig the representative of the German Minister of Justice urged that the British lawyers, representing the injured parties, should assume the rôle of co-prosecutor and thus take an active part in the trials. But the Allies had agreed that these trials should be German trials pure and simple. The Allies' official note to the German Government, signed by M. Millerand and dated 7th May, 1920, had expressly declared that " the Allied powers have decided that they will leave the German Government full and

entire responsibility for the trials, without intervening therein." So this invitation was declined. The British Mission, accordingly, never addressed the Court, but confined itself to communicating informally with the State Attorney and with the officials of the Ministry of Justice.

When the British witnesses were giving evidence, questions and answers were translated sentence by sentence. At all the British trials except one, the interpreter was Dr W. E. Peters, a German of Australian birth, who was a graduate of Aberdeen University, and who had refused during the war, greatly to his own inconvenience, to take any part in the German campaign against England. His interpreting left nothing to be desired. The British witnesses soon felt that in him they had a friend amid their strange surroundings.

Though the British Mission was silent in Court, it was ever vigilant, and had frequent communication with the German authorities. It was not easy to establish these informal relations, especially as the Germans were obviously disappointed at the British refusal to assume the rôle of co-prosecutor. But, such is the force of personality, in a very short time Sir Ernest Pollock was able to secure the adoption of every suggestion that he had to make. At times he had to be severe, particularly when unexpected evidence was given in the *Llandovery Castle* case about the general conduct of the British Navy. But

he was always candid, so the German authorities always knew of his criticisms in time to put matters right. At all times, the British Mission was ready, if necessity arose, to make formal protests against the way in which the trials were being conducted and, presumably, to withdraw, if it was convinced that the trials were unfair. But judges, like prisoners, are innocent till they are proved guilty. From the outset, the British Mission made it clear that it assumed that justice would be done. As a result, the trials were conducted in an atmosphere of mutual confidence.

There is no doubt that the British Mission and the witnesses who gave evidence in the Court created an immense impression upon the German Court, the officials, the press, and public. There was dignity and firmness without swagger. Every Englishman in Leipzig behaved as the representative of a nation of gentlemen. The British Mission paid official calls upon the President of the Court, the State Attorney, and others, and these calls were promptly returned. Whenever the judges entered or left the Court, the members of the British Mission were the first to rise and bow to them. Germans do not easily understand this kind of chivalry and, while in Leipzig, I often used to wonder what would have happened if the positions of the English and the Germans had been reversed. From the moment when at the German frontier it was my duty to seek

out the officials who had been sent to meet the British Mission, I gathered the impression that everybody concerned in Germany was dreading the whole proceedings. But it is un-British to visit national hatred, however deep and justified, upon individuals against whom personally nothing is known. The journey to Leipzig was not at an end before relations of courtesy and confidence had been established. This was typical of the British Mission throughout. Some people, at a time when national antipathy is at its height, take a strange pleasure in going to the opposite extreme and professing personal friendship and brotherliness. The British Mission did not act thus, but at the same time everyone was treated with perfect courtesy and consideration. As a result of this conduct and of the manner in which the British witnesses gave their evidence, the reputation of England in Germany stood higher than ever. All this perhaps seemed treason to the minority in this country who thrived on hatred, yearned for revenge, and could never dissociate the individual from the mass. But I have no hesitation in saying that the way of the British Mission was best.

Of the cases which could be brought to trial, three were cases arising out of atrocities to prisoners of war, and three were concerned with submarine warfare. In the next two chapters the story of each trial will be told.

CHAPTER III: THE BRITISH CASES [PRISON CAMPS]

1. Sergeant Karl Heynen.

The first prosecution in the series of War Criminals' Trials was that of Karl Heynen, who in October and November, 1915, had been in charge of a number of British prisoners at the " Friedrich der Grosse " coal-mine at Herne in Westphalia. This case was selected, not because the cruelties alleged against Heynen constituted the worst prison camp case that could be brought, but because it was known that Heynen had already been convicted by a German court-martial in consequence of his treatment of the British prisoners under him. This being so, it was considered impossible that the German Court could acquit him.

In civil life, Heynen was a master-cooper. He was a man of little education, of the stolid, rugged type which military training can easily convert into a brute. He had served in the German Army from 1895-97 and had then passed into the Reserve. When the Great War broke out, he was called up as a non-commissioned officer in the Landsturm. He

fought in Russia where he was wounded, and it was in consequence of his wounds that he was posted to duty with prisoners of war.

The following extracts from the judgment of the Court tell the story of the events which led up to the charges made against Heynen:

There were placed under him two hundred and forty prisoners of war of whom about two hundred were English and forty were Russians. They were to work in a colliery. This was kept secret from them, probably because it was foreseen that they might be unwilling to undertake such work. In fact they believed, from what they had been told, that they were to work at a sugar factory.

He received as his sentries a draft of one Lance-Corporal and twelve Landsturm men, most of whom had only received their necessary training during the war.

On 13th October, 1915, *the accused with his detachment of sentries and the prisoners left Münster for Herne. He had received no further orders than that he had to see to it that the prisoners undertook the work intended for them; he was to make his own arrangements; until his arrival in camp in Herne he was to keep silent about their place of destination and the work intended for them. On the way discontent became apparent among the prisoners because they saw that they were going to be made to work in a mine. They vented their*

discontent by such utterances as "Nix Minen" and thus let it be understood that they would not work in a mine.

It was impossible for the accused to make himself understood to the prisoners, as he had not been allotted an interpreter. After arrival at the Railway Station at Herne the accused first endeavoured to find amongst the English prisoners a man who understood German sufficiently to be able to act to some extent as an interpreter for his fellow prisoners. Such a man he found in the English prisoner Parry, who, however, at that time had but little knowledge of German.

In consequence of the discontent generally prevailing among the prisoners, their march from Herne Railway Station to the camp (a distance of about half-an-hour's walk) was very slow.

During the night of 13th-14th October the English prisoners agreed jointly to refuse to work in the mine, partly because only a few of them were miners and they did not like this kind of work, and partly because they looked upon such work as a help to Germany in her conduct of the war. In consequence of this, on the morning of 14th October, only some of the prisoners who were to form the morning shift put in an appearance. Some of these, however, had not put on the mining clothes which had been given out to them. As they had planned, they refused to obey the order to put on the mining

clothing. There were loud shouts such as "Nix Minen." They informed the accused through Parry that they would not go down the mine and gave their reasons.

In view of the strict orders given to the accused to see that under any circumstances the work was undertaken, he found himself in a difficult position. In order to enforce obedience to his order to change clothes, the accused first ordered his men to load their rifles and to fix bayonets before the prisoners' eyes, thus showing without any doubt that he intended his order to be obeyed. By no such means could he succeed in breaking the disobedience of the prisoners. He was no more successful when he arrested a number of them. The prisoners still made it clear that they were determined not to obey the order to change their clothes. The position was not changed even when the pickets showed clearly that they were ready to use their bayonets and rifles. In order to break the prisoners' determination before their insubordination grew worse, the accused, thrown back entirely upon his own resources, was obliged to use force to secure obedience to his orders.

In their evidence the British witnesses frankly admitted the refusal to obey orders, and one and all declared that their reason was that it was illegal for them to be made to work in a coal-mine, such work being of assistance to the enemy's military operations.

It must have required enormous courage on the part of these prisoners to take up their stand in the face of armed men with the whole military machine of Germany behind them. It was some time before they could be compelled to obey Heynen's orders. They were struck and kicked by both Heynen and the sentries; they were divided into small groups and by brute force compelled to put on their miner's clothes and to go to work in the pits.

But even when the prisoners had been induced to do the work prescribed for them, the brutalities did not cease. They were assaulted both while working in the mine and also in the camp. The Court found that "the prisoners, after their first resistance had been broken, took up their work in the mine and that they subsequently executed it without hesitation, if with varying diligence." But none the less Heynen's attitude towards them grew worse.

Two instances will show the kind of treatment to which these unfortunate prisoners were subjected.

One of the prisoners was a man named Cross, since dead. The allegation in the indictment of Heynen was that Cross became insane as the result of cruelties which Heynen inflicted upon him. Several of the witnesses told the Court how Heynen had thrashed Cross, and one of them (Burridge) told how Cross used to cry out in his sleep, "Take him away," still in terror of his brutal commandant. It was not disputed at the trial that Heynen forcibly

put Cross under a shower-bath. Some of the witnesses said that this bath lasted over an hour, and that Cross was put alternately under hot and cold water. Evidence for the defence was called to the effect that the structural arrangement of the shower-bath did not permit of any such alternating of hot and cold water. Other British witnesses spoke to having seen civilian labourers gathering round the outside of the wash-house, attracted by the shrieks of the unfortunate Cross. Parry, the interpreter, admitted in his evidence that Cross "was strange before the bath," but he was definite that "he was mad afterwards." On this brutal incident the Court found as follows:

The English prisoner Cross suffered from abscesses in the lower part of the leg. Some days previously the doctor had ordered that poultices should be given him. On November 15th Cross went to the accused to get bound up and seemed clumsy while he was being bandaged. The accused in consequence got very excited and hit him with his fist. Cross fell from his stool. As he lay upon the ground the accused kicked him. . . . The accused ordered that Cross should be given a bath. Thereupon Cross was brought into the bathroom, and, after his clothes had been taken off, was placed under the shower. He struggled and cried out loudly, and when he wanted to get away he was again put under the shower. How long Cross

was kept under the shower cannot be established with certainty. Such statements about time are usually apt to be incorrect, and in addition to this, the memory of witnesses on this, as on many other points in regard to the charges, has naturally and obviously become vague. There can be no question of this shower-bath having continued for an hour or more; it is more likely that the whole proceeding in the bathroom (as has been stated by the English prisoner Burridge) took only a few minutes. . . . The ill-treatment in regard to Cross of which accused is guilty is limited to the blows and kicks when Cross showed the sores on his leg. With reference to the charge of having in addition ill-treated him in the bathroom he is acquitted. It is also untrue that Cross became insane as a result of the treatment that he received. As his comrades have admitted, Cross had previously shown signs of mental derangement. When these signs became more apparent after the ill-treatment to which he had been subjected, he was immediately sent to the doctor at the instance of the accused and the doctor sent him back to the main camp at Münster.

The other instance concerned the prisoner McDonald, an attractive, boyish, foreman-stevedore of Liverpool, whose frankness and personality quite captivated the Court. McDonald and another prisoner had escaped from the camp and was

re-captured. For this he was naturally punished, but, apart from this legitimate punishment, Heynen took it upon himself to hit him with the rifle-butt, knock him down, and then kick him. The President of the Court asked McDonald why he had escaped, obviously expecting to be told about the conditions of the camp. McDonald, who was quite fearless, replied, " It was an Englishman's duty to escape when he could." Dr Schmidt, no little surprised at this answer, replied with a smile, " And the duty of every German to catch him," at which McDonald smiled also. The Court found that:

In November the prisoners McDonald and Birch escaped from the camp. A few days afterwards they were brought back again. Immediately on their return the accused, who was very angry at their flight, ill-treated them in the detention cell. He used his fist and his rifle-butt.

Many of the charges against Heynen related to his treatment of men who reported sick. The Court found:

Some of the offences committed in November, 1915, *which have been proved against him were committed against prisoners who had reported sick. The medical service in the camp was under the superintendence of Dr Kraus, who lived in Herne. At the beginning this doctor visited the camp almost daily, early in the morning, so that prisoners who reported themselves sick without cause could*

still be sent to work in the pit with the morning shift. In consequence of this, during the early days the inducement to report sick out of pure disinclination to work was comparatively small. After some time Dr Kraus became exceedingly busy in consequence of the scarcity of doctors, and so he ordered that prisoners who reported sick should be brought to his residence during his consulting hours. This took up so much time that prisoners who were found on inspection to be fit for work missed the whole shift. Thus numerous prisoners were induced, although they were not sick, to report themselves to the doctor, in order that they might at least escape work. This practice became so common that often there were gangs of twenty and thirty prisoners going to the doctor, of whom only isolated cases were really sick. This was bad for both the doctor and for the work which had to be done, so the accused was told to send to the doctor only those prisoners whom he himself considered to be sick. He was particularly told to take the temperatures of all prisoners reporting sick and, except where there were signs of other illness besides fever, to allow only those prisoners to go to the doctor who had temperatures which showed fever. It has not been proved that the accused did not properly carry out this duty of examining prisoners. In particular there is no proof that he knowingly prevented sick men from going to the

doctor. He must, therefore, be acquitted on this part of the indictment.

But, though acquitted on this part of the charge, Heynen was found guilty of more than one assault upon sick men. For instance, it was accepted that "he struck Jones in the face with his fist because Jones, who had a swollen cheek, declared that he had toothache."

It was not only the British prisoners who complained of Heynen's brutality. A German witness (Murken) admitted that he once said to a fellow-sentry, "This is intolerable," referring to Heynen's conduct generally. Heynen was, he said, "frightfully severe to the prisoners and ourselves. . . . We decided to send in a report about Heynen."

The Court found that "there has been no complaint of any kind of excess towards the Russian prisoners of war who were placed under him and who were occupied with agricultural work." That there was no complaint, only proves, one would think, that the Russians were more accustomed to Heynen's methods than were the British.

Of the general conditions in the camp the Court said as follows:

The prisoners had no justifiable grounds for complaint about their lodging and maintenance. The lodging conditions were satisfactory and the accused endeavoured with great zeal to remedy the

defects of the camp, which at the beginning still required improvement. . . . That the food was not more strengthening and more plentiful was due to the general food difficulties already prevailing at that time in Germany. That the English prisoners, especially after the abundant conditions obtaining in their own country, suffered no serious want is shown by the fact that they frequently threw away their vegetable and meat soup, and sometimes spitted their ration of liver-sausage on the barbed wire of the camp.

Heynen was obviously quite unfitted for his responsibilities and particularly unfit to deal with the sturdy British spirit. He was overworked and, in the end, scarcely responsible for his actions. He stated in evidence that he often worked from four a.m. to midnight; he was just the type that overworks out of sheer incompetence. The Court found:

Little as his failings can be excused, yet they can be explained to a large extent by the unstinting way in which he devoted his energetic personality to his appointed task. In carrying out his duties he spared himself least of all. He developed a state of irritability and excitement which almost amounted to an illness, and this more and more undermined his self-control. This is shown clearly by the increasing number of offences towards the end of his period of command. . . . No continuous

intention of ill-treating the prisoners placed under him has been found. On the contrary, his conduct in all these cases was due to momentary annoyance or excitement, especially when he was concerned with men who were reporting sick without any, or any apparent, reason.

Apart from the offences of which he is now found guilty, the accused bears an excellent and blameless character, both as a citizen and as a soldier. This applies especially to his later term of military service. He was removed from his command as soon as his offences against prisoners became known in higher quarters, namely, on 26th November, 1915. On 5th April, 1916, he was sentenced by a court-martial, partly on account of the cases of ill-treating prisoners of which he now stands convicted. But afterwards he won back the trust and appreciation of his superiors. He again reported himself at the Front and during the years 1916-18 he took part in the battles on the Western Front. He earned the distinction of the Iron Cross of the II class, and on 17th April, 1918, he was promoted Sergeant.

Above all it has to be realised that he had had no adequate instruction in his duties and that his staff of sentries was inadequate, both as regards quality and number. He was thus placed in an extremely difficult position, a position which was beyond his strength and abilities.

During the trial, Heynen showed no trace whatever of either anxiety or emotion. He steadfastly denied most of the incidents to which the British witnesses had spoken. On more than one occasion the President of the Court turned to him and said angrily that it was useless for him merely to deny the charges that were being made, as the Court was convinced that the British witnesses were respectable men telling the truth.

After the evidence came the speeches. It was in this trial that the German military expert, General von Fransecky, made the speech which attracted a great deal of attention at the time in the British press. He justified Heynen's conduct on the ground that it was his duty, at all costs, to secure obedience to his orders. He spoke of the traditions of obedience obtaining in the German Army, and proudly claimed that Heynen had these traditions "in his flesh and blood." Dealing with the recalcitrance of the British prisoners and with their refusal to obey orders to work in the coal-mines, he said that, under no circumstances were prisoners entitled to object to any order given them, and that Heynen was fully justified in using his rifle, and in ordering the sentries to use theirs, in order to compel obedience. He maintained that the conduct of the British prisoners amounted to mutiny, and that, therefore, the use of force against them was justified. At this juncture the President of the Court pointed

out to General von Fransecky that, according to the German military code, force could only be used against unarmed men in cases "of extreme necessity" involving physical danger. General von Fransecky urged that the circumstances in which Heynen had to act came under this category, but the President told him frankly that the Court was not impressed with the argument that it was for the benefit of military discipline to punish recalcitrant prisoners by boxing their ears and knocking them about indiscriminately. The President later again interrupted General von Fransecky, and pointed out that, if Heynen realised that the situation was beyond his powers, he should have asked for assistance from his superior officers. General von Fransecky answered this by saying that Heynen rightly felt that it was for him to secure obedience at any cost.

Listening to General von Fransecky, one seemed to hear the war-time German High Command speaking, rather than the mild-mannered old gentleman in mufti who was addressing the Court. The General, apart from the sentiments that he was expressing, seemed utterly unlike a typical German General. My own impression was that at heart he deplored Heynen's brutality, but that he forced himself to try to justify him out of misplaced loyalty to the military machine. General Fransecky made a great mistake in doing this, for he justified, not Heynen's

conduct, but the conduct of those who insisted upon his trial in order to secure the condemnation of Germany's war-time military system.

Then followed the State Attorney. In his speech he admitted that there may have been in Heynen's mind a fear of mutiny, and he agreed that the refusal to work on the part of the prisoners justified severe measures to secure discipline. He pointed out, however, that the complaints as to brutality had not only come from the English prisoners. He described Heynen's conduct as "unheard-of" and "brutal," and he vigorously denied that anything in the nature of a mutiny had existed. He said that military law does not justify the reckless infliction of injuries upon individuals or insults being hurled at them. He maintained, however, that the prisoners were bound to work in the coal-mines. He placed due weight upon the general good conduct of the accused, and came to the conclusion that he must ask for a sentence of two years' imprisonment.

Dealing with the arguments of General von Fransecky and of defending counsel, that Heynen was justified in using brutal means to break the prisoners' resistance to orders, the Court found:

He was bound by the orders given to him to see that the work was done and by those orders he was covered. In view of these orders, a refusal of obedience, especially when general, was inadmis-

sible. Though they had a right to lodge complaints, the prisoners, as subordinates, were bound to comply unconditionally with the orders of the accused, even in cases in which they considered the orders to be illegal. In so far as the accused employed force, or ordered it to be employed, in order to compel obedience to his orders, he has not acted contrary to law and consequently has not rendered himself liable to punishment. This right of compelling obedience includes, under the then existing circumstances, a right to make any necessary use of weapons. The accused committed no breach of the law when, under such circumstances, he used the butt end of the rifle against unruly prisoners. It is essential, however, that, in the use of physical force, whether by the use of weapons or without, a man in such a position should not exceed the degree of force necessary to compel obedience. It has not been proved that the accused went beyond this limit. It seems quite clear that no serious wounds were inflicted, in spite of the use of weapons.

In all the cases included in the indictment which relate to ill-usage in direct connection with the mutinous refusal to work on 14th October, the Court has arrived at the decision to acquit the accused.

But none the less the Court found Heynen guilty on fifteen charges of brutality that were unconnected with any refusal to obey orders. His

treatment of Cross was regarded as his most serious offence. In addition to these offences, Heynen was found guilty on three charges of insulting prisoners. Heynen had called Parry and two other prisoners "Schweinhund" (Pig-Dog). These "crimes," so serious in German eyes, will be referred to later in Chapter VI.

The sentence finally passed upon Heynen was as follows:

There can be no question of detention in a fortress, in view of the nature of his offences, especially those committed against prisoners who were undoubtedly sick. On the contrary a sentence of imprisonment must be passed. The accused is condemned to ten months' imprisonment. The period of detention during the inquiry will be counted as part of the term of imprisonment now ordered.

2. Captain Emil Müller.

This case was far more serious than either of the other prison-camp cases. In the first place, the cruelty inflicted upon the unfortunate prisoners resulted in a heavy death-roll; secondly, Müller was a man of education, and an officer. In civil life he was a barrister, living at Karlsruhe.

In April, 1918, Müller was a Captain in the Reserve, and was appointed to take command of the prison camp of Flavy-le-Martel shortly after the neighbourhood had passed under German control. To quote the judgment of the Court:

The duties of the Company Commanders consisted solely in housing, feeding and supervising their prisoners, and in arranging, day by day, to provide the troops requisitioned for outside work. They had nothing to do with the regulation of this work itself or settling the hours of labour. This was the business of the Commander of the Battalion.

The Company Commanders took over a camp which was found empty. The camp had shortly before been taken from the English during the March offensive, and had previously been used by them as a camp for the temporary reception of German prisoners of war. It was in a wretched condition. It lay in a marshy and completely devastated district, immediately behind the fighting line, where everything was still in constant movement. During the time the English had been in possession of it, it was unfit for human occupation. The witness Roeder, who at the end of January and beginning of February, 1918, *had taken part in the war on the English side, and had often come there as interpreter, gave evidence that the accommodation had been defective in the extreme. In the two residential barracks, which together afforded room*

for some three hundred prisoners only, double that number had been quartered. These barracks had a muddy, unboarded floor. There were no beds, but only some rotten wood-wool, which was infected with vermin. Windows and roofing were leaky. There were but two small so-called trench stoves, so the German prisoners suffered from the cold in winter. The latrines were as primitive and unwholesome as can be imagined. There was a complete absence of sanitary arrangements, and also almost a complete absence of facilities for cooking and washing as well as of rugs. As a consequence of all this, numerous prisoners had become sick with influenza and intestinal troubles, especially with dysentery. Many had died. All had complained of the plague of lice. Even the English guard had suffered heavily. An English doctor had endeavoured in vain to remove these defects.

It is desirable to set out this finding at the outset because the appalling sufferings of the British prisoners at this camp were primarily due to its physical conditions, and one of the principal questions in the trial was the extent to which Captain Müller was responsible for the suffering and the death-roll that resulted. The evidence of Roeder had great weight with the Court, but the most important part of his evidence was that, when this camp was under British control "as a rule men were only three or four days there; occasionally a

fortnight." Roeder added that "the British commandant behaved very well."

There is an enormous difference between using a camp as a temporary "cage" where three hundred to six hundred prisoners were housed for a few days, and using the same camp, without alterations, as a semi-permanent camp for well over one thousand men who were doing heavy work. The outside fence of the camp was only about two hundred yards in circumference, and the whole area of the camp soon became one large cesspool. The men rapidly got into a filthy and verminous condition and became afflicted with sores. The accommodation was utterly insufficient. The thousand men were herded in three huts, the approximate dimensions of which were sixty feet by twenty feet. There were no floor boards, and no bedding or camp utensils were supplied. The men had to sleep on the wet ground, and so crowded were the huts that there was not room for all to lie down. One witness (Higginbotham) told the Court that "each hut could at most hold one hundred men. We slept on the earth. We could not all get into the huts, but were driven in by sentries. All could not lie down."

The Court found that:

The accused found the camp in precisely this condition, and had to do his best with it. The position was rendered more difficult for him because he was obliged to quarter over one thousand men in

the barracks, as fresh prisoners were constantly arriving. Further, all the wells round about were ruined. The food allotted was insufficient, and during the first days he had no medical assistance. Finally, he was obliged to detail daily very many men for heavy outside work, and the prisoners were already in a quite exhausted condition when they came under him. They were inadequately equipped with uniforms on arrival, as also with underclothes, rugs and so on.

On this latter point the evidence was conflicting. A British prisoner (Eccles), who had kept a diary while in the camp, swore that " we arrived clean," but a German witness (Terluisen) stated that " the men were very lousy " on arrival at the camp.

Another point on which the evidence was conflicting was the duration of Müller's command. Eccles' diary showed that the first deaths among prisoners were on 4th May, and that Müller left the camp on 7th May, but several of the British witnesses believed that there were deaths before then, and that he was at the camp considerably later than 7th May. The Court decided that:

The accused held this position from the beginning of April until 5th May, 1918, *that is to say, for a period of about five weeks. On the 4th May he was given leave, as he needed treatment for neurosis of the heart. He left the camp on 5th May and never returned.*

This finding was fully in accordance with the balance of evidence.

In consequence of the conditions in which the prisoners were compelled to live, they rapidly became weak and repeatedly fell out on the road going to work. Dysentery became rife, and within a month no less than five hundred men were suffering from it. Notwithstanding this, the sick men were sent out to work. The awful death-roll was directly and solely attributable to the appalling conditions of life prevailing at the camp. The Court found that:

This epidemic developed after the departure of the accused in such a manner that a large proportion of the prisoners had to be transferred into the interior to Stendal, where many more died from it. In the camp itself the number of deaths from dysentery is said to have been considerable, but not until after the departure of the accused. . . .

The Court thus ignored the obvious probability that deaths after Müller's departure from the camp were caused by conditions for which Müller was, partly at least, responsible. The Court found that, as regards the cases for which Müller was responsible, "not a single case has had really serious consequences." But the death-roll speaks for itself.

The Court would not hold Müller in any way responsible for the physical conditions of this camp.

The accused at once set energetically to work to effect an improvement. On the one hand he

sent many memoranda to his superiors in order to draw their attention to the conditions, and he made emphatic demands for what was wanting. By urgent representations, both verbal and in writing, he in fact obtained many things. For example, medical assistance was allotted to him as early as the third day. Furthermore, he himself took in hand the improvement of the camp as far as was possible. He formed a working party from what labour was left in the camp. He had wells sunk, stoves installed, proper latrines laid out, cooking and washing places provided, and he fought the plague of lice first by means of powder and finally by getting a disinfecting station set up. He also succeeded in getting some improvement in the food, and occasionally he got the outside work made easier. On one occasion he procured soap as well as extra food and luxuries from Belgium. On another he managed to get hold of some clothing which was not intended for his men at all. Several times he procured some horse-flesh, and he detailed those prisoners who were particularly weak for duty in the kitchens and bakeries, where they could get more food. He thus showed that he had sympathy with his prisoners and that he was not insensible to their real needs.

In spite of all this the position of the prisoners became continuously worse. Food remained insufficient; the causes of this lay in the shortage

of nourishing food prevailing at that time owing to the blockade. The strength of the prisoners had not grown equal to the strenuous outside work. This work was necessitated by the fighting and in determining it the accused had in general no influence. Most of the prisoners grew weaker and weaker and they often collapsed at their work or on the march to their place of work as well as at the roll-calls in camp. Furthermore, infectious diseases broke out in the shelters which were already overrun with lice and infected with germs of disease. The prisoners did not keep themselves clean and were unable to change either uniform or underclothing. At first there was not any sufficient quantity of disinfectant.

But no responsibility of any kind rests upon the accused for this wretched aggravation of the conditions. He had perceived the danger in good time and had done everything to prevent it. That in this respect he attained but little was due to the circumstances which were beyond both him and also his immediate superiors. It was not possible at that time to take adequate care of the troops' and prisoners' camps close behind the battle zone. Nevertheless, in a short time the accused did an astonishing amount towards improving his camp and he laid the foundations whereby in the course of the succeeding months (when a quieter period came along) this camp could be converted into a

relatively well-equipped prisoners' camp. Later not only his superiors but also the medical inspectors repeatedly acknowledged this to be so. He has the reputation of having been an able, energetic and conscientious officer, who always carried through the tasks which were imposed upon him and who always maintained good order. His immediate superior, the Commander of the Battalion, Major von Bomsdorf, confirms this in particular. It cannot be disputed that as Camp Commandant he displayed these characteristics and that in this capacity he showed meritorious industry. In particular he cannot be reproached with not having endeavoured in good time to get the camp free from epidemics. The cases of sickness from dysentery were then still sporadic; there was no question of a real epidemic.

So far, therefore, as the general conditions in the prisoners' camp at Flavy-le-Martel are concerned the accused must not only be acquitted of any blame, but it should be placed on record that the zeal with which he carried out his duties deserves high praise.

These conclusions were only possible by the rejection of a good deal of the British evidence. In the British official summary, which had been forwarded to the State Attorney, it was stated that " complaints as to the conditions were frequently made to the commandant, Müller, but nothing was

done to remedy them." One witness (Higginbotham) gave evidence that he overheard Müller say that " he wished Lloyd George could see them now in that lousy condition." There was a good deal of evidence to the effect that Müller had found a grim satisfaction in the sufferings which the conditions caused our men. The Court held that the prisoners had " a preconceived idea that the accused was animated by feelings of spiteful malignity towards them," an idea which the Court held to be erroneous. Yet the Court admitted in its judgment that " instead of earning the prisoners' confidence, he got a reputation among them for being a tyrant and a nigger-driver."

The view adopted by the Court, that Müller was not responsible for the physical conditions of the camp, implies a most severe condemnation of the German staff. They must have known that this camp at Flavy-le-Martel had accommodation only for about three hundred men; they probably knew that it had only been used by the British as a temporary " cage." But so eager were the German staff to use the labour of the prisoners that they ignored all considerations about the suitability of the camp. A senior Military Expert (General von Kuhl) attended this trial, in addition to General von Fransecky, and he told the Court that prisoners had to be neglected for " it was extremely difficult to look after our own soldiers in this district." The

prisoners were given work to do which no prisoners ought ever to be made to do. They built or re-built railways, and even had to handle munitions, quite close to the German firing-line. For this the German staff were responsible, and their eagerness to secure the labour of the prisoners for such work was primarily the cause of all the miseries which our men had to undergo at Flavy-le-Martel.

Though the Court acquitted Müller of any responsibility for the conditions of the camp, it severely denounced him for many acts of individual brutality. The Court found:

His attitude towards the prisoners was hard and over severe, sometimes even brutal, and in other cases it was at least contrary to regulations. He treated them not as subordinates, and it was as such that he ought to have regarded his prisoners, but he treated them more like convicts or inmates of penitentiaries. His methods were those of the convict prison or such like institutions, although even on this standard his conduct could not be tolerated. The Court has heard of his ill-treating prisoners by hitting and kicking them. He allowed his staff to treat them in the same manner. Insults were hurled at the prisoners and there was other ill-treatment which was contrary to the regulations. He habitually struck them when he was on horseback, using a riding cane or a walking stick.

There has been an accumulation of offences

which show an almost habitually harsh and contemptuous, and even a frankly brutal, treatment of prisoners entrusted to his care. His conduct has sometimes been unworthy of a human being. These factors the Court considers decisive. When he mixed with the prisoners there was seldom anything but angry words, attempts to ride them down, blows and efforts to push them out of his way; he never listened patiently to their grievances and complaints; he had no eyes for their obvious sufferings; he cared little for the individual if only he could secure order among the prisoners collectively. It is impossible to consider his conduct as a number of separate instances of rash actions which he regretted; it appears rather as a deliberate practice of domineering disregard for other men's feelings. It is no justification that his methods were intended to secure discipline. It is also no excuse that the conditions had been brutalised by war.

The accused should have avoided being unduly severe; and above all he ought not to have indulged in such reprehensible means of punishment as blows, kicks, tying-up and such like. Such conduct dishonours our army, and is singularly unfitting in a man of his education and military as well as civilian position.

The Court having thus described Müller's attitude towards the prisoners, it is not difficult to understand that the prisoners came to be convinced

that Müller "was animated by feelings of spiteful malignity towards them." But it is difficult to understand why the Court should have discounted the British evidence on the ground that this conviction in the minds of the prisoners was "a preconceived idea," founded on prejudice.

A few instances of Müller's brutality must suffice. The following cases were accepted as proved by the Court:

The accused while on horseback struck a prisoner who was suffering from a bad foot. At roll-call this prisoner had raised his leg to show it to the accused, but the accused hit him across his leg with his riding cane. The man cried out, fell down and had to be carried into barracks.

He thrashed the prisoner Batey with his walking stick. This man became ill while at work outside the camp and, although violently attacked by the sentries who did not believe in his inability to work, he refused to work any further. The sentries reported him to the accused on their return and Batey repeated that he was ill and emphatically asked for a doctor. The accused got furious over this, as he thought that Batey was a malingerer; he then belaboured him.

The accused admits that he liked, as soon as he appeared at roll-call, to ride quite quickly up to the ranks. He thought this was a suitable way of ensuring proper respect for himself and of making

the prisoners attentive. According to the evidence of almost all the English, and also of some German, witnesses he frequently rode so far into the ranks that the ranks were broken. The prisoners scattered on all sides and many who could not get out of the way quickly enough were thrown down by the horse. Such excesses when riding up to a body of men are altogether contrary to regulations and are to be condemned. This is also the opinion of the military expert, General von Fransecky.

The accused once struck Drewcock at roll-call. He struck him across his wounded knee with his riding cane so hard that an abscess developed and later had to be cut. The accused could not have foreseen this, for the wounds on Drewcock's knee were not visible to him. But the blow must have been a heavy one.

In general the accused has admitted that it was his practice to enforce discipline, in cases of irregular behaviour, by means of light blows. He will not as a rule tax his memory about the details. He explains, however, that it would have been impossible to attain rigid discipline if he had tolerated any lengthy explanations, especially as he and the prisoners could not understand each other's language. There may be some truth in this and there were no doubt serious difficulties in commanding such a camp. But nevertheless the accused never had any right to get

over these difficulties by means of endless acts of violence.

According to the statement of the witness Lovegrove, the accused once saw two recumbent sick men lying down; they were so weak that they could not stand up before him and were groaning pitifully. But the accused is said to have got angry and impatient and to have kicked them. There is a possibility that the accused did not wish to hurt the men, whose sickness he apparently did not yet believe to be real, but that he only wished to secure that his order to get up was immediately obeyed. It is not clear that the kicking was particularly violent or painful. Clearly, however, in each instance this constituted a treatment of the sick contrary to regulations.

The accused often forced work on sick prisoners. When he could not muster the full complement of workers demanded or when supplementary demands arrived, he forcibly sent everyone out, even those entered as sick or who were obviously incapable of work; he tolerated no opposition. This is stated by numerous prisoners, and the German witness Benker confirms it. The accused cannot answer this by pleading that he considered many of these alleged sick to be malingerers or that his strict orders obliged him to send out the numbers of workers that were demanded. For the first excuse contradicts the evidence of the witnesses who declare that there

could have been no doubt about the sickness of many of the men in question. With regard to the second excuse, the military advisers von Kuhl and von Fransecky declare that there was certainly a great and urgent need of workers and that the necessity for a scrupulous supplying of the demands for them had been enjoined upon the commandants of the camp. But they had been expressly told to avoid including weak or sick prisoners because the maintenance of the prisoners in a healthy condition was just as much to the interest of the administration of the Army as it was in that of humanity. These considerations the accused in his excessive zeal constantly ignored.

At least two cases were proved in which Müller ordered prisoners to be tied to posts, a form of punishment which was abolished in the German Army on 26th May, 1917. One British witness (Sharpe) stated: " I was ordered to stand up facing the sun for an hour and a half. I fainted."

One further incident may well be narrated, for though not fully accepted by the Court, it explains a good deal about Müller's psychology. Several prisoners complained that Müller habitually took photographs of them, even when they were in the agonies of illness. All that the Court accepted was that:

The accused took some small photographs of the camp, especially of the latrine when the

prisoners were using it, to commemorate his service as Commandant. He did this with a feeling of pride in the improvements effected by him. He might well have done this in a less objectionable manner. But in taking the photographs he had no intention of insulting the prisoners.

The opinion which I formed of Müller as I watched him during the trial was that he was a degenerate who found satisfaction in observing suffering, a form of disease not unknown to doctors. I summed him up as a man who needed doctors rather than jailers, but no defence was raised at the trial that he was not responsible for his actions. During the trial, Müller was throughout excited and nervous. He frequently jumped up and made passionate protests of his innocence. He was a big man, about six feet high, and broad in proportion, but at times he burst into tears, covering his face with his hands.

The Court found that Müller was in an extremely nervous condition when he was at Flavy-le-Martel.

The only possible excuse for him was that he was over-excited; that he feared disorder, and that he did not know how to handle men. But even so, it must be recalled that he had under him prisoners who were peculiarly unfortunate, sick and suffering men who deserved protection. When these prisoners offended against the regulations, the cause for the

most part lay in their miserable condition. Such men in such conditions were not likely to be really refractory.

He has been an able officer who faithfully tried to do his duty, who always strove to win the appreciation of his superiors, and who had hitherto secured appreciation in full measure throughout his long years of war service. Then, however, he was suddenly confronted with an unusually difficult situation. He was obliged to take over the to him novel position of commandant of prisoners of war, and this in one of the most disturbed battle areas, close up against the front, in a devastated and unhealthy neighbourhood and at a time of most severe scarcity of all necessaries of life. The accused had, so to speak, to create out of nothing a camp to house the unending stream of prisoners. All these burdens were placed upon him at a time when he was already almost breaking down as a result of war strain and an old heart complaint, and when he was afflicted with serious nerve trouble.

But none the less the Court was of opinion that Müller " showed himself, generally speaking, equal to his task." It found, further, that:

His excesses were only due to that military enthusiasm which worked him up to an exaggerated conception of military necessity and discipline. He made insufficient allowance for the special conditions in which prisoners in war-time find themselves.

He showed himself severe and lacking in consideration, but not deliberately cruel. His acts originated, not in any pleasure in persecution, or even in any want of feeling for the sufferings of the prisoners; but in a conscious disregard of the general laws of humanity.

When General von Fransecky addressed the Court in this case, he took a more humane and reasonable line than in the Heynen case. He admitted that, if the Court was satisfied that sick men had been hit or kicked, or that sick men had been sent to work, such conduct was inexcusable. He stated that, if Müller had acted as the witnesses generally had described, he could only account for his conduct by the fact that he was over-strained and on the verge of a nervous breakdown.

The State Attorney took a very generous view of the accused's conduct. He began by saying that this case was much better than that of Heynen—according to the British view, this was far from the fact, for Müller's case was undoubtedly more serious than that of either Heynen or Robert Neumann.

The State Attorney said that, from the point of view of the prosecution, he could not hold Müller responsible for the condition of the camp. He fully admitted that its condition was extremely bad, and accepted the evidence of the German witnesses who had said that the British prisoners had gone to the camp in a filthy condition. "I hold it to be my

duty," he said, "to challenge the view that we Germans were deliberately brutal to our prisoners." He said that Müller had gone beyond his strict duties in his efforts to help the prisoners, but he then went on to admit that many of the charges of individual cruelty against them had been proved. "I judge his individual acts," he said, "with great severity. The accused knew the German traditions of preventing any ill-treatment of prisoners of war, but the evidence fully proves that he has ill-treated them. For this he must pay the penalty." Dealing with the suggestion of the Military Experts that the conduct of the prisoners had sometimes amounted to mutiny, the State Attorney said that there was not the slightest trace of "extreme need" or "pressing danger," which were the only grounds on which, according to the military code, force could be used against unarmed men. He said, however, that Müller had been a very energetic officer, perhaps too assiduous, and that he probably had gone too far in his efforts to get the number of men required for work. He said that no case had been proved in which the accused had kept sick men from the doctor. He could not ask for a sentence of detention in a fortress, although, in his view, there was no sign of any dishonourable conduct on the part of Müller. He accordingly asked for a sentence of fifteen months' imprisonment.

The final judgment of the Court was that nine

instances of deliberate personal cruelty had been proved; that in addition there was one case in which he had allowed one of his subordinates to ill-treat a prisoner; that there were also four instances of minor breaches of the regulations, and two cases of insults. A sentence of six months' imprisonment was passed, the period of detention pending and during trial to be considered as part of the term awarded.

3. Private Robert Neumann.

This man was a labourer. From March to December, 1917, Sergeant Trienke and Neumann were in charge of some British prisoners who were at work in a chemical factory at Pommerensdorf. Trienke could never be found by the German Government, and this trial, therefore, lost a good deal of its importance, as Neumann was undoubtedly the lesser of the two offenders. Had it been known, when this case was selected, that Trienke would not be forthcoming, it is doubtful whether the case would have been tried. For Neumann was a miserable creature, not born ever to hold power over men. Yet the trial is significant, for General von Fransecky, the official Military Expert, having heard all the accounts of Neumann's brutalities and methods, declared that Neumann was a pattern of what a German soldier should be.

The Court found the following facts about Neumann's record:

The accused is a trained soldier. He fought during the war on the Eastern front, was wounded in the year 1915 *near Warsaw and, after his discharge from hospital, he was reported fit for garrison duty and was detailed to a Landsturm Battalion at Altdamm. He was sent from there on* 26*th March,* 1917, *to guard prisoners of war at the prisoners'. camp at the Chemical Factory, Pommerensdorf. One hundred and fifty to two hundred prisoners of war were housed there and among these were about fifty or sixty Englishmen, who were employed in the factory, particularly in filling, weighing and loading sacks of phosphate. The non-commissioned officer Trienke was in command of the detachment.*

As in Heynen's case, counter-charges were made against the British prisoners for having refused to obey orders. The Court found:

On 1*st April,* 1917, *a fresh troop of English prisoners arrived at the camp. The work seemed to them to be too hard. They therefore decided jointly to refuse to do it. On the afternoon of* 2*nd April they carried out this decision and openly refused to work.*

The prisoners assembled for the night shift announced to Trienke, through their interpreter, that they would not work. Trienke tried in vain to

get them to give in. All friendly persuasion was futile. He gave the commands "Right about turn," "Left about turn" without any result. Then he gave his sentries the order to set about the prisoners. The sentries went for the prisoners with the butts of their rifles and the prisoners dispersed in all directions. Prisoners were wounded. It has been established that Neumann took part in this attack on the prisoners. He fell upon the Scotchman Florence and belaboured him with his fists and feet.

For these incidents the Court refused to hold Neumann criminally responsible. On the general charges the Court decided:

The complaints of the English prisoners that they were inhumanly and brutally ill-treated at the camp are unfounded, or at least exaggerated so far as they are directed to the accused. Many witnesses have asserted that the accused took special pleasure in constantly hurting them. This accusation particularly has no foundation. There can be no question of this in view of the evidence. Neumann was a conscientious soldier, determined to do his duty within the limits of his orders. He sometimes went too far in this enthusiasm to do his duty, but any tendency to be brutal was far from his nature. The witness Erdmann, who from 1915 *was an Inspector in the Pommerensdorf Factory, emphatically states that*

Neumann never did anything to a prisoner who did his work properly. The other German witnesses who had the opportunity of seeing the accused at work in Pommerensdorf unanimously agree with this opinion. To some extent the English evidence supports this view, because the witness Benson, in his examination in London, frankly admitted that he never saw anybody struck without cause. As a rule the prisoners had given some cause.

The accused denies the charges. Here and there he says that he may have hit one of the prisoners with the butt of his rifle in order to make him work. In this he considers himself to have been justified, as the English prisoners were often refractory, in marked contrast with the Serbs and Russians. . . . He claims to have acted strictly according to regulations. He absolutely refused to tolerate breaches of discipline.

Neumann was indeed a model of the military system which General von Fransecky applauded and represented. He would carry out the letter of his instructions at all cost and would never allow the slightest concession on grounds of humanity. The Court held:

The accused was actuated solely by a desire to do his duty. The trial has not revealed any tendencies to cruelty or any brutal disposition. If he made himself hated by the prisoners who have given evidence against him, this can partly be

explained by the fact that, loyal to his instructions, he always maintained severe discipline in the camp, and never shared in the technically irregular intimacies between the prisoners and the other sentries which appear to have taken place in Pommerensdorf at that time. He was, as several German witnesses have explained, " a true soldier." His excesses (making use of the butt of his rifle even for trifling faults on the part of the prisoners) certainly cannot be excused in this way. None the less his offences must be regarded as comparatively light, especially when they were committed against prisoners who were refractory and who were not willing to work. The English witnesses assert, it is true, that they did all they could to perform the heavy work that was allotted to them. But this does not exclude the probability that the accused believed that he had to deal with insubordinate men, especially as on more than one occasion, there were open manifestations of insubordination on their part.

There was a great deal of evidence, both British and German, to the effect that the British prisoners made themselves popular both with some of the German sentries and with some of the factory hands with whom they worked. The incident, to which I have referred in Chapter II, was indicative; a British prisoner was caught by Neumann in the act of enjoying a mild flirtation with a German woman working in the factory. There was other evidence

to the effect that the British prisoners had shared their food with the sentries, and that they had received favours in return. The prisoners used apparently to be able to visit the neighbouring village and some of the German witnesses stated that on several occasions they came back drunk. All this was anathema to Neumann. The other sentries were Landsturm men who had never been in the fighting-line. Neumann was the real military article and felt a pride in suppressing all the little human touches which make life under such conditions at all tolerable. During the trial he referred to the prisoners as "Kerle," a derogatory term for which "fellow" is an inadequate equivalent, until the President of the Court abruptly ordered him to speak more respectfully.

The worst case charged against Neumann was that concerning his treatment of Kirkbride, a weak, unintelligent, but good-natured man, whom no one with any humanity could possibly ill-treat. He must have been quite unfit for the hard manual work which he was ordered to do. Kirkbride told the Court how, whilst he was working, Neumann rushed at him and struck him in the stomach with the butt end of his rifle, knocking him down. While the unfortunate Kirkbride was on the ground Neumann struck him another blow on the back of his head. "I don't know what he struck me for," said Kirkbride pathetically, "but I was told afterwards that I was

not working hard enough to please him." Some time later Neumann again saw him at work. He came up to him and said something in German which Kirkbride did not understand. He then struck him several times with the rifle on his arm and head. After this Kirkbride became strange in the head and was sent to hospital at Münster. As a witness he impressed the Court with his sincerity; he had not the wit to invent lies. When he had finished, the President turned to Neumann and asked him what he had to say. Neumann said nothing, to which the President replied, "What? You have nothing to say after *this* evidence?" The finding of the Court on this charge was as follows:

The evidence was to the effect that Kirkbride, who with three other prisoners had to wheel a barrow, was obviously idling and that he used expressions which showed that he had not the least desire to work for Germany ("For Germans nix arbeiten"). There was nothing else for the Inspector to do but to call the accused to his assistance. Neumann was the only sentry in the camp, who, apart from Trienke, appears to have known how to bring stubborn workers to heel. Neumann spoke seriously to the Englishman but without result. Finally he took up the butt of his rifle and gave him several blows on the back and shoulders. . . . The defence maintains that the circumstances justified the accused using his rifle against an insub-

ordinate prisoner. But the existing service regulations only allow a sentry in a case of this kind to use his rifle when there is persistent disobedience to orders which cannot be overcome in any other way. This was certainly not the case here. There were other ways of breaking the resistance of a single man and of forcing him to obey. It would have been an easy matter to arrest him. The Court is convinced that the accused knew that this was possible.

Another typical case concerned a man named Sommersgill, with regard to whom the Court found:

This prisoner about August, 1917, *requested to be sent to the doctor because he had influenza. The accused declined to do so and, in order to make him begin work, hit Sommersgill's back and elbow with the butt. The witness was obliged to get medical treatment and was excused work for three days.*

One prisoner (Florence) was brutally assaulted by Neumann because he had sent in a complaint.

This prisoner had appealed to the Commander-in-Chief at Stettin on account of the bad treatment which he had suffered. Thereupon a senior German officer visited the camp and ordered an inquiry. Neumann was angry at this and gave the man who had complained a thorough thrashing.

Summing up the worst cases the Court held:

The accused kicked, struck or otherwise physically ill-treated prisoners who were under his charge

and were his subordinates. He did this deliberately and intended that his blows should hurt the prisoners. In doing this he had absolutely no justification. In isolated cases the accused may have only intended to keep the prisoners to their work. But there can be no question of his being entitled to secure proper results by these improper means. . . . It is clear that the accused exceeded his duty in a number of cases. He allowed his irritation to lead him into acts of violence against prisoners which the circumstances did not justify.

In regard to certain other incidents the Court stated that "the accused punished the prisoners from a sense of his own superiority and not because of any inadequate, or alleged inadequate, work."

But the Court would not hold Neumann responsible for the measures he took, however severe, to break the collective disobedience of the prisoners when they refused to work. Referring to the allegations of brutality on 1st April, the Court held:

The accused cannot be held responsible for these events. He was covered by the order of his superior which he was bound to obey. A subordinate can only be criminally responsible under such circumstances when he knows that his orders involve an act which is a civil or military crime. This was not the case here. Before the non-commissioned officer Trienke gave this order, he made telephone

inquiries of the Commandant of the camp at Altdamm. Therefore he himself clearly acted only upon the order of a superior. As matters stood, there could be no doubt of the legality of the order. Unless there is to be irreparable damage to military discipline, disorderly tendencies have to be nipped in the bud relentlessly and they have to be stamped out by all the means at the disposal of the Commanding Officer and, if necessary, even by the use of arms. It is, of course, understood that the use of force in any particular case must not be greater than is necessary to compel obedience. It has not been established that there was any excessive use of force here.

At the close of the evidence, General von Fransecky addressed the Court as Military Expert. He began by saying that the picture presented to the Court was very unedifying to the military eye. "The prisoners," he said, "had openly and collectively refused obedience to orders. The sentries had fraternised with them, and had even got drunk." He bemoaned the fact that at that time military necessity compelled Germany to make use of broken and inexperienced men for the work of guarding prisoners. "In this sad picture," he said, "Neumann is the one redeeming feature. He had served in the army and therefore had a sense of discipline. He knew what the hard word 'duty' meant. He demanded from the prisoners that same

duty which he owed to his superiors. It is natural that such a man was irksome to the prisoners." He then went on to say that Neumann had not exceeded his duty in any way, and described him as "a pattern of a dutiful German soldier."

The State Attorney then presented the view of the prosecution. He began by agreeing that the accused was a dutiful soldier, but he added that this was no excuse for brutality. "Most of the charges in Müller's case," he said, "evaporated at the trial, but this was not the case here." He proceeded to deal with various incidents and in nearly all cases he pointed out that the evidence of the British witnesses had proved the charges made. He said that "Neumann had been systematically cruel, often when there was not the slightest justification." He asked for a sentence of eighteen months' imprisonment.

The Court held that twelve of the seventeen instances of assault had been proved. It added that "the evidence of the English witnesses for the prosecution has been generally accepted, as the Court has seen no reason to disbelieve their statements." An inclusive sentence of six months' imprisonment was passed, the four months which Neumann had already passed in prison pending trial being reckoned as part of the sentence. So in effect Neumann was sentenced to a further period of imprisonment of two months only.

CHAPTER IV: THE BRITISH CASES [SUBMARINES]

1. Lieutenant-Captain Karl Neumann.

This case was different from all others tried by the German Court. The official summary that was forwarded to the German State Attorney charged Neumann: "That he, being in command of the UC. 67, on the 26th day of May, 1917, off the North Coast of Africa, attacked, torpedoed, and sank without warning, His Britannic Majesty's hospital ship *Dover Castle*, well knowing her to be a hospital ship, in circumstances of extreme brutality, contrary to the laws and usages of war, thereby causing the deaths of six of her crew." But the "extreme brutality" was in torpedoing the ship, not in any subsequent conduct on the part of the submarine commander. Though there were eight hundred and forty-one souls on board, including six hundred and thirty-two patients, all were rescued. No charges of personal brutality were made against Neumann, apart from the sinking of the ship. So Neumann contented himself with admitting the

facts, relying upon the defence that he was ordered to torpedo the ship.

The torpedoing was obviously executed on the orders of the German Admiralty, and therefore the only substantial issues were the legality of the orders of the German Admiralty and whether they covered the actions of the accused. The former issue was scarcely a point upon which the judgment of any German Court, however impartial, could be of much value. As will be shown later in Chapter VII, the question of superior orders is a vital and difficult one, but it could hardly be expected that a German Court would give a decision which could be regarded as settling the law upon it.

The method by which Neumann had been identified is interesting. On 23rd May, 1917, the British ship *Elm Moor* had been torpedoed by this same submarine. Captain Williamson, its master, was taken prisoner on board the submarine. He was on board during the attack on the *Dover Castle*. Later he was released from the submarine, and landed as a prisoner of war at Cattaro. Having lost all his papers on the *Elm Moor*, and not appreciating the prospect of travelling through to Germany without any papers, he requested the commander of the submarine to give him a certificate to the effect that he was the master of the *Elm Moor* at the time that she was sunk. Neumann accord-

ingly wrote out and signed a certificate. This was handed to Captain Williamson, who was eventually released from Germany, and returned home, bringing the certificate with him.

Faced with this document, the German authorities could not deny the facts. So at the trial the facts alleged by the British authorities, including the statement that six deaths were caused by explosion of the torpedo, were admitted. No witnesses were, therefore, called at the trial. The State Attorney brought in no indictment and himself pleaded for an acquittal. The trial only lasted two hours. The Court took a narrow view of its functions and decided the case almost entirely on German law. The legality of the orders upon which Neumann had acted was practically taken for granted.

In fact the whole proceedings seemed unreal. Neumann showed not the slightest trace of anxiety. He stood up fearlessly and gave evidence on every point about which he was asked. As he had retired from the German Navy, he wore a morning coat, but had his Iron Cross and another decoration let in to his coat by his left-hand pocket. He admitted that at the time of the sinking he was aware of the Hague Conventions, and said that he was convinced of the justice of his orders from the German Admiralty as "he knew that hospital ships were being abused." He was asked about a conversation with him which

Captain Williamson had reported. He denied that any such conversation had taken place, and added stiffly: "I should not have tolerated any remarks from a prisoner. That is not my temperament."

In his speech the State Attorney admitted that there was no evidence that, as Neumann believed, the *Dover Castle* was carrying munitions or combatant troops, and he asked the Court to decide the issue on the assumption that the hospital ship was being properly used. He considered that Neumann's orders were legal, and that he was bound to carry them out. He accepted the Hague Conventions as binding, but maintained that, if the German Government was convinced that hospital ships were being used for wrongful purposes, it had a right to restrict their movements. Neumann, he said, would be criminally liable if he had gone beyond his orders, but this he had not done. He therefore asked for an acquittal.

The essential parts of the judgment are as follows:

The State Attorney has entered no indictment on this charge, but he has asked for an inquiry to decide the point whether the accused in the Tyrrhenian Sea on 26th May, 1917, intentionally killed six men and whether these men were killed deliberately.

On 26th May, 1917, the accused sighted two steamers, escorted by two destroyers. The weather

was clear and sunny. The accused was therefore soon able to see that the two steamers carried the distinctive outward signs laid down for military hospital ships. He then approached nearer to the convoy, which was pursuing a zigzag course, and about six p.m. he fired a torpedo at the steamer nearest to him. The steamer was hit; it remained stationary but did not sink. One of the destroyers which were accompanying it came alongside its starboard side and took off its crew, as well as all the sick and wounded on board. Only after this had taken place, about one and a half hours after the first torpedo, did the accused sink the vessel by firing a second torpedo. He then rose to the surface and found out from the markings on the unmanned life-boats which were drifting about that the sunken steamer was the "Dover Castle."

When torpedoed she had sick and wounded on board and was on her way to take them from Malta to Gibraltar. When the vessel was sunk not one of these perished. The first torpedo that was fired, however, caused the death of six members of the crew.

The accused frankly admits sinking the "Dover Castle." He pleads that in so doing he merely carried out an order of the German Admiralty, his superior authority. With respect to this order the circumstances are as follows:

During the first years of the war the German

Admiralty respected the military hospital ships of their opponents in accordance with the regulations of the 10*th Hague Convention. . . .*

Later, however, they got to believe that enemy Governments were utilising their hospital ships, not only to aid wounded, sick and shipwrecked people, but also for military purposes and that they were thereby violating this convention. In two Memoranda, dated 29*th January and* 29*th March,* 1917, *respectively, the German Government explained its attitude more clearly and gave proof in support of its assertions. It stated that it would not entirely repudiate the Convention, but was compelled to restrict the navigation of enemy hospital ships. Accordingly it was announced in the second Memorandum that henceforth, as regards the Mediterranean, only such hospital ships would be protected which fulfilled certain conditions. The hospital ships had to be reported at least six weeks previously and were to keep to a given course on leaving Greece. After a reasonable period of grace, it was announced, all other enemy hospital ships in the Mediterranean would be regarded as vessels of war and forthwith attacked.*

The second Memorandum reached the enemy Governments in the early part of April, 1917. *It corresponds with the order of the Admiralty issued on* 29*th March,* 1917, *to the German Flotilla in the Mediterranean.*

"As from 8th April hospital ships generally are no longer to be permitted in the blockaded area of the Mediterranean, including the route to Greece. Only a few special hospital ships, which have been notified by name at least six weeks previously, may use the channel up to the Port of Kalamata. Advise submarines that as from 8th April every hospital ship on the routes named is to be attacked forthwith, excepting such only as have been expressly notified from here in which cases speed, times of arrival and departure will be exactly stated."

This order was communicated to the accused before his departure from Cattaro. Previously the two Memoranda had been also brought to his knowledge. Exceptions in the case of special hospital ships had not been arranged, as the enemy Governments made no use of the opportunities to notify their hospital ships given in the Memorandum of 29th March, 1917.

The facts set out in the Memoranda he held to be conclusive. He was, therefore, of the opinion that the measures taken by the German Admiralty against enemy hospital ships were not contrary to International Law, but were legitimate reprisals. His conduct clearly shows that this was his conviction. He never made any secret of the sinking of the "Dover Castle." Not only did he report

it to his superiors, but he has also frankly admitted it in the present proceedings. He has never disputed that he knew that the "Dover Castle" was a hospital ship.

It is a military principle that the subordinate is bound to obey the orders of his superiors. This duty of obedience is of considerable importance from the point of view of the criminal law. Its consequence is that, when the execution of a service order involves an offence against the criminal law, the superior giving the order is alone responsible. The Admiralty Staff was the highest authority over the accused. He was in duty bound to obey their orders in service matters. So far as he did that, he was free from criminal responsibility. Therefore he cannot be held responsible for sinking the hospital ship "Dover Castle" according to orders.

Under Section 47 of the Military Penal Code there are two exceptional cases in which the question of the punishment of a subordinate who has acted in conformity with his orders can arise. He can in the first place be held responsible if he has gone beyond the orders given him. In the present case the accused has not gone beyond his orders. It was impossible to give a warning to the "Dover Castle" before the torpedo was fired because she was escorted by two warships. The accused is not charged with any peculiar brutality in sinking the ship. On the contrary he made it

possible to save all the sick and wounded on board the "Dover Castle" by allowing about an hour and a half to elapse between the firing of the first and second torpedoes. According to Section 47 of the Military Penal Code a subordinate who acts in conformity with orders is also liable to punishment as an accomplice when he knows that his superiors have ordered him to do acts which involve a civil or military crime or misdemeanour. There has been no case of this here.

The accused accordingly sank the "Dover Castle" in obedience to a service order of his highest superiors, an order which he considered to be binding. He cannot, therefore, be punished for his conduct.

2. First-Lieutenants Ludwig Dithmar and John Boldt.

This trial was held after the Belgian and French trials. It was in some respects the most important of the British cases. But before dealing with the facts, it is desirable to recall that, as explained in Chapter I, this trial was not held at the instigation of the British Government. The commander of the U-boat 86, Commander (then First-Lieutenant) Helmut Patzig, was on the list of accused persons submitted by this country. His home was believed

to be in Dantzig, though relations of his lived at Weimar. Dantzig was separated from Germany by the Treaty of Versailles and at the time of these trials it was not known where Patzig was living. The German authorities made inquiries among the crew of U-boat 86 and thus collected evidence which supported the charges made by the British Government. On their own initiative, therefore, they arrested the two other officers of the submarine, Dithmar and Boldt, and requested the British Government to send the British Mission again to Leipzig and to supply the evidence available against Patzig. Dithmar was still in the navy and appeared in uniform at the trial. Boldt had retired and wore mufti, but, like Captain Neumann in the earlier submarine trial, he wore the Iron Cross on his morning coat.

The facts are adequately set out in the following extracts from the judgment of the Court:

Up to the year 1916 *the steamer "Llandovery Castle" had been used for the transport of troops. In that year she was commissioned by the British Government to carry wounded and sick Canadian soldiers home to Canada from the European theatre of war. The vessel was suitably fitted out for the purpose and was provided with the distinguishing marks, which the* 10*th Hague Convention requires in the case of naval hospital ships. The name of the vessel was communicated to the enemy powers.*

From that time onwards she was exclusively employed in the transport of sick and wounded. She never again carried troops, and never again had munitions on board. There can be no doubt about this.

At the end of the month of June, 1918, *the "Llandovery Castle" was on her way back to England from Halifax. She had on board the crew, consisting of one hundred and sixty-four men, eighty officers and men of the Canadian Medical Corps, and fourteen nurses, a total of two hundred and fifty-eight persons. There were no combatants on board. The vessel had not taken on board any munitions or other war material. This has been clearly established.*

In the evening of 27th June, 1918, *at about nine-thirty (local time), the "Llandovery Castle" was sunk in the Atlantic Ocean, about one hundred and sixteen miles south-west of Fastnet (Ireland), by a torpedo from the German U-boat* 86. *Of those on board only twenty-four persons were saved, two hundred and thirty-four having been drowned. The commander of U-boat* 86 *was First-Lieutenant Patzig, who was subsequently promoted captain. His present whereabouts are unknown. The accused Dithmar was the first officer of the watch, and the accused Boldt the second. Patzig recognised the character of the ship, which he had been pursuing for a long time, at the latest when she*

exhibited at dusk the lights prescribed for hospital ships.

In accordance with International Law, the German U-boats were forbidden to torpedo hospital ships. According both to the German and the British Governments' interpretation of the said Hague Convention, ships, which were used for the transport of military persons, wounded and fallen ill in war on land, belonged to this category. The German Naval Command had given orders that hospital ships were only to be sunk within the limits of a certain barred area. However, this area was a long way from the point we have now under consideration. Patzig knew this and was aware that by torpedoing the "Llandovery Castle" he was acting against orders. But he was of the opinion, founded on various information (including some from official sources, the accuracy of which cannot be verified, and does not require to be verified in these proceedings), that on the enemy side, hospital ships were being used for transporting troops and combatants, as well as munitions. He, therefore, presumed that, contrary to International Law, a similar use was being made of the "Llandovery Castle." In particular, he seems to have expected (what grounds he had for this has not been made clear) that she had American airmen on board. Acting on this suspicion, he decided to torpedo the ship, in spite of his having been advised not to

do so by the accused Dithmar and the witness Popitz. Both were with him in the conning tower, the accused Boldt being at the depth rudder.

The torpedo struck the "Llandovery Castle" amidship on the port side and damaged the ship to such an extent that she sank in about ten minutes. There were nineteen life-boats on board. Each could take a maximum of fifty-two persons. Only two of them (described as cutters) were smaller, and these could not take more than twenty-three persons. Some of the boats on the port side were destroyed by the explosion of the torpedo. A good number of undamaged boats were, however, successfully lowered. The favourable weather assisted life-saving operations. There was a light breeze and a slight swell.

During the trial it was conclusively shown that there was no panic on board the sinking ship and that Captain Sylvester, who died before the trial took place, was the last man to leave her. All the British witnesses eagerly testified to this. There was a good deal of doubt about the actual number of boats which were lowered and the actual number which survived the final sinking of the ship; the latter undoubtedly caused the destruction of one or more boats which had safely reached the water. The judgment proceeded:

From the statement of the witness Chapman, in

conjunction with other evidence, it may be concluded that of the boats on the starboard side, three (marked with odd numbers) were got away undamaged with two of the boats on the port side (marked with even numbers). Chapman, who was second officer on board the "Llandovery Castle," has impressed the Court as a quiet, clear-headed and reliable witness. The evidence has also shown that he did not lose his head while the ship was sinking, but that he coolly took all the necessary measures. Confidence can, therefore, be placed unhesitatingly in his evidence. He saw five boats lowered from the starboard side, two of which, however, capsized, so that only three got away safely. . . . Two boats got away from the port side. In one of them, when it left the "Llandovery Castle," was the captain of the ship, Sylvester, who has since died. This boat ultimately contained twenty-four men. It was the only one whose occupants were rescued; its occupants are the only survivors of the "Llandovery Castle."

In addition to the captain's boat, another got clear from the port side, and it had in it the first officer and five or six seamen. According to the evidence of the fourth officer, the witness Barton, this was the port cutter. The evidence has shown that at least three of these five boats survived the sinking of the ship. The witnesses Chapman and Barton saw them rowing about at a later period, as

well as the captain's boat, the port cutter and boat No. 3.

That this boat, No. 3, got clear away from the ship was also proved by the fact that a man was taken from it on to the submarine and later handed over to the captain's boat. The Court finally came to the conclusion that " after the sinking of the *Llandovery Castle*, there were still left three of her boats with people on board."

The judgment then describes the efforts made by the submarine officers to find evidence in support of their belief that the *Llandovery Castle* had had troops or munitions on board.

The captain's boat was hailed by the U-boat, while it was busy rescuing shipwrecked men, who were swimming about in the water. As it did not at once comply with the request to come alongside, a pistol shot was fired as a warning. The order was repeated and the occupants were told that, if the boat did not come alongside at once, it would be fired on with the big gun. The life-boat then came alongside the U-boat. Captain Sylvester had to go on board. There he was accused by the Commander of having had eight American airmen on board. Sylvester denied this and declared that, in addition to the crew, only Canadian Medical Corps men were on the ship. To the question whether there was a Canadian officer in the life-boat he answered " Yes." Then the latter, the witness Lyon, doctor and major

in the Medical Corps, was taken on board the U-boat. On being told that he was an American airman, Lyon answered, as was true, that he was a doctor. He also answered in the negative the further question whether the "Llandovery Castle" had munitions on board.

The U-boat then left the captain's boat, but, after moving about for a little time, returned and again hailed it. Although its occupants pointed out that they had already been examined, the captain's boat was again obliged to come alongside the U-boat. The witnesses Chapman and Barton, the second and fourth officers of the "Llandovery Castle," were taken on board the U-boat and were subjected to a thorough and close examination. The special charge brought against them was that there must have been munitions on board the ship, as the explosion when the ship went down had been a particularly violent one. They disputed this and pointed out that the violent noise was caused by the explosion of the boilers. They were again released. The U-boat went away and disappeared from sight for a time.

Shortly afterwards the U-boat came again in sight of the captain's boat. It circled round, and so close did it come that the men in the captain's boat were convinced that the U-boat Commander was trying to ram them. This Court found as to this that, "there is no conclusive evidence of this, although

the suspicion cannot be refuted entirely. . . . The question does not need to be settled, as the two accused cannot be made answerable, even if the commander of the U-boat had intended at the time to sink the life-boat." The life-boat then hoisted a sail and endeavoured to sail away.

After a brief period, the occupants of the boat noticed firing from the U-boat. The first two shells passed over the life-boat. Then firing took place in another direction; about twelve to fourteen shots fell in all. The flash at the mouth of the gun and the flash of the exploding shells were noticed almost at the same time, so that, as the expert also assumes, the firing was at a very near target. After firing had ceased, the occupants of the life-boat saw nothing more of the U-boat.

Several members of the crew of the U-boat were called as witnesses for the prosecution and their evidence confirmed all essential points of the British evidence and made it abundantly clear that the firing from the U-boat was directed against the unhappy men and women in the life-boats.

The firing from the U-boat was not only noticed by the occupants of the captain's boat. It was also heard by the witnesses Popitz, Knoche, Ney, Tegtmeier and Käss, who were members of the crew of the U-boat. According to their statements a portion of the crew of the U-boat were on deck during the evolutions of the U-boat, during the

holding up of the life-boat and during the interrogation of the Englishmen. Popitz and Knoche took part in the interrogation, and confirm that no proof was obtained of the misuse of the "Llandovery Castle."

After the examination was completed, the command "Ready for submerging" was given. The whole of the crew went below deck. There only remained on deck Commander Patzig, the two accused as his officers of the watch and, by special order, the first boatswain's mate, Meissner, who has since died. . . . Firing commenced some time after the crew had gone below. While firing, the U-boat moved about. It did not submerge even after the firing had ceased, but continued on the surface.

This fact that only officers and Meissner, an experienced gun-layer, were on deck during the firing is sufficiently significant, but other facts were given in evidence by German witnesses. The Court found that "the crew of the U-boat have the same conviction" that the firing was directed against the life-boats.

The witness Popitz was acting in the U-boat as third officer of the watch. In this trial he has given the impression of being a quiet and cautious man. He was on deck when the life-boat was hailed, but went below before the order to prepare to dive was given, in order to work out the position where the torpedoing had taken place. He then lay down in

his bunk. From then onwards he heard the shooting. . . . He took it for granted at once, as there was no question of any other enemy, that the life-boats were being fired at.

The witness Knoche was the chief engineer of U-86. He also was below when the firing took place, but he also assumed that it was connected with the life-boats. He says that he first set the idea aside, as he did not at all like it. He did not want to know what was going on on deck. Some days later he was talking to Patzig about the occurrence and told him that he (Popitz) could not have done it. Patzig answered him that he could never do it a second time. It is unthinkable that this conversation could have related only to the torpedoing of the "Llandovery Castle," and not also to the subsequent shooting which took place.

A short time after the firing, Patzig summoned the accused and the crew to the control room and there extracted promises of secrecy from them. The Court naturally assumed from this that the officers had "reason to fear the light of day," and that their fear can only "have been the firing on the life-boats." Two captured British mercantile marine officers were also on board and promises of secrecy till the end of the war were extracted from them also. Both these men were called as witnesses at the trial.

Another fact which greatly influenced the Court

was the refusal of both the accused to give evidence. The Court found that:

It is very much to their prejudice that in this trial they have refused, when called upon, every explanation on essential points, on the ground that they had promised Patzig to be silent with respect to the occurrences of the 27th June, 1918. . . . *The promise of silence which they gave to Patzig . . . can only lead to the conclusion that events which deserve punishment did take place. If the firing could be explained in any other way, it cannot be imagined that the agreement of the accused to maintain silence could prevent them from denying the firing on the boats.*

If the promise to maintain silence, which he extracted from the accused, covered no more than the torpedoing, Patzig would certainly have found ways and means of releasing his subordinates from this promise, after proceedings had been instituted against them. But, on the contrary, he endeavoured to bind to silence the remainder of the crew of the U-boat with regard to the events of the 27th June. He laid emphasis in his speech on the fact that, for what had taken place, he would be responsible to God and to his own conscience. It is hardly necessary to draw attention to the fact that behaviour of this nature on the part of a commander towards his crew is unusual and striking. Although Patzig in this speech may have made no special mention

of gun-fire, he certainly would have alluded to it specially, had not his request for silence covered the subsequent firing. The view of the crew that the shooting was directed entirely against the life-boats cannot have been hidden from him. It was also entirely within his power to correct this opinion when he was speaking to them about the events of the 27th June, and to explain to them, if their opinion was wrong, the real object of the firing.

Another very significant fact was the following:

It is clear that by every means Patzig has endeavoured to conceal this event. He made no entry of it in the vessel's log-book. He has even entered on the chart an incorrect statement of the route taken by the ship, showing a track a long way distant from the spot where the torpedoing occurred, so that, in the event of the sinking of the "Llandovery Castle" becoming known, no official inquiries into the matter could connect him with it.

In consequence of this concealment, the German Admiralty knew nothing of the sinking of the *Llandovery Castle* and, when the British Government sent a protest to Berlin, via Spain, the German Government denied that the ship had been sunk.

Having considered all these facts, the Court unhesitatingly came to the conclusion that the firing was directed against the life-boats.

The prosecution assumes that the firing of the U-boat was directed against the life-boats of the

" Llandovery Castle." The Court has arrived at the same conclusion.

The Court has decided that the life-boats of the " Llandovery Castle " were fired on in order to sink them. This is the only conclusion possible, in view of what has been stated by the witnesses. It is only on this basis that the behaviour of Patzig and of the accused men can be explained.

The Court also found that:

The crew of the U-boat have the same conviction. During the following days they were extremely depressed. A subsequent collision with a mine, which placed the U-boat in the greatest danger, was regarded as a punishment for the events of the 27th of June.

The captain's boat was eventually picked up, and its occupants reached home, being the only survivors from the ship. The Court reported:

The captain's boat cruised about for some thirty-six hours altogether. On the 29th June, in the morning, it was found by the English destroyer " Lysander." The crew were taken on board and the boat left to its fate. During the 29th June, the commander of the English Fleet caused a search to be made for the other life-boats of the " Llandovery Castle." The English sloop " Snowdrop " and four American destroyers systematically searched the area, where the boats from the sunken ship might be drifting about. The " Snowdrop "

found an undamaged boat of the "Llandovery Castle" nine miles from the spot on which the "Lysander" had found the captain's boat. The boat was empty, but had been occupied, as was shown by the position of the sail. Otherwise the search, which was continued until the evening of the 1st July, in uniformly good weather, remained fruitless. No other boat from the "Llandovery Castle" and no more survivors were found.

The commanders of the *Lysander* and *Snowdrop* (Commander F. W. D. Twigg, O.B.E., R.N., and Commander G. P. Sherston, R.N.) were called as witnesses to prove these events. Both were splendid examples of British naval officers, and greatly impressed the Court. They were in uniform when they gave evidence, and one was proud to contrast them with the brutal wretches who had torn up every tradition of the sea.

During this trial there was an ugly development which at one time threatened to affect seriously British opinion about the fairness of the Court. To the amazement of the British lawyers present, a series of witnesses were called for the defence in an attempt to prove that the British Navy had committed atrocities at sea and that British hospital ships had been misused. Thus a German ex-prisoner said that while at Tilbury he saw hundreds of men in uniform go on board the *Llandovery Castle* itself. The fact was doubtless true, for, as is well known,

British R.A.M.C. men were dressed much like combatant soldiers. The witness declared that these were combatant men, but obviously he could not have known that this was so. All the evidence was of this kind. Sir Ernest Pollock made a vigorous protest to the assistant State Attorney when the Court adjourned. The next morning both the State Attorney and the Presiding Judge reiterated the opinion which they had expressed to the defence when this evidence was first submitted, namely, that this kind of evidence was irrelevant and of no value. Counsel for the defence were warned that, if they persisted in calling such evidence, there must be an adjournment to enable the British answer to be given; these counter-charges had never been submitted to the British authorities. Defending counsel looked sheepish, asked for an adjournment to enable them to consider their position, and finally intimated that they would not submit further evidence of this kind. In its judgment the Court stated:

With regard to the question of the guilt of the accused, no importance is to be attached to the statements put forward by the defence, that the enemies of Germany were making improper use of hospital ships for military purposes, and that they had repeatedly fired on German life-boats and shipwrecked people. The President of the Court had refused to call the witnesses on these points named

by the defence. The defence, therefore, called them direct. In accordance with the rules laid down by law the Court was obliged to grant them a hearing. What the witnesses have testified cannot, in the absence of a general and exhaustive examination of the events spoken to by them, be taken as evidence of actual facts. The defence refused a proposal for a thorough investigation of the evidence thus put forward.

For the defence there were also called two witnesses who said that it was a universal conviction in the minds of all German naval officers during the later years of the war that hospital ships were being abused, and that, therefore, they ought to be regarded as ships of war. One of these witnesses (Dr Töpfer) went so far as to say that German submarine commanders fully believed that any destruction of enemies which would injure the enemy nations was justifiable. The other (Vice-Admiral von Trotha) declared that, as the severity of the U-boat warfare increased, submarine commanders were convinced that no feelings of humanity must be allowed to check their efforts. He added to this significant admission the naïve statement that it never occurred to a submarine commander that there would be any punishment after the war for what they did in the execution of their duty to the Fatherland. In fairness it must be said that these witnesses, having been out of Court during the trial, did not know

the details of the charges against the accused men. When Admiral von Trotha was told what the charges were, he could only say that he could not imagine how such incidents could have occurred.

The Naval Expert (Corvette-Captain Saalwächter) then addressed the Court. He was a marked contrast to General von Fransecky, the Military Expert in the prison camp cases. He made no attempt to justify brutality. I was told that he was one of the most brilliant young men in Germany, and that his record had been one long series of honourable achievements. My impression of him was that he was a fair and able man, struggling to do his best to put the most favourable light upon conduct of which, at heart, he thoroughly disapproved. He advanced many ingenious theories which might account for the conduct of Patzig and the accused. He suggested, for instance, that the life-boats which had got away from the ship and which had disappeared might have been destroyed by wreckage coming up from the sunken ship. But the Court swept all his suggestions aside. As an expert, he placed no importance upon the severity of the explosion when the ship was sunk by the torpedo. Various witnesses had alleged that the severity of the explosion was proof that the ship was carrying munitions, but the Naval Expert admitted that it was impossible to distinguish by the sound an explosion of the boilers from an explosion

of munitions. He emphasised the necessity of submarine commanders being suspicious, even of life-boats, and made great play with the British "Panic Parties," which had been so successful a ruse in attacking U-boats. He praised the accused men for keeping silence, and urged that they had pledged themselves to their commander. He disputed the view that the accused officers could have refused to obey their commander.

The State Attorney opened his speech by saying that, in his forty years' experience, he had never had to shoulder so difficult a task. "I have," he said, "to accuse two German officers of the most serious charge known to our German code." He went through the story of the sinking and the firing, and accepted nearly all the evidence that had been given. He said that he had no doubt that at least three of the life-boats, fully loaded, had reached safety when the ship finally sank. He said it was also quite clear that, besides the captain's boat, at least one other was investigated by the submarine. He said that the legality of the torpedoing of the *Llandovery Castle* was not a matter at issue at this trial, and added that the Court was also not concerned with the question whether England had ever misused hospital ships. "We are only concerned here," he said, "with what happened after the sinking." He was convinced that the object of the firing was to exterminate the survivors from the ship.

He submitted that this intention was not formed until after the examination of the life-boats had been concluded. There was no necessity, according to his view, that the Court should be clear about who actually fired the gun; Patzig and the accused had acted jointly, and were jointly responsible. He urged that the accused officers would have been justified had they refused to obey the order to fire. He took the view that it was not proved that any deaths had occurred as the result of the firing, and, therefore, he only asked for a verdict of attempted murder. He asked for a sentence of four years' hard labour in each case.

During his speech, the State Attorney commented very severely on the conduct of Patzig. "I have no doubt," he said, "that Patzig knew and knows that his subordinates are being held responsible for these events. It would be natural and his duty for him to appear to tell the truth. If Patzig believes that he, and not the accused officers, is guilty, he should come before the Court." He characterised Patzig's conduct as "colossal meanness" and "cowardice." He was convinced that Patzig's absence meant that he knew that all three officers were guilty.

This speech aroused real anger in defending counsel. Both made political speeches, denouncing England for her "hunger blockade"; one of them quoted Scripture and spoke of Germany's mote

and England's beam. There was, they said, no question of the accused having committed any breach of the laws of nations. One of the defending counsel went so far as to say that it was necessary to destroy the men and women in the life-boats in order to prevent them from reaching their homes and rejoining the war against the Fatherland. The Court showed considerable irritation during these speeches.

In its judgment the Court found that " the act of Patzig is homicide." Contrary to the view of the State Attorney, the Court held that life-boats were hit and their occupants killed by gun-fire.

The Court finds that it is beyond all doubt that, even though no witness had direct observation of the effect of the fire, Patzig attained his object so far as two of the boats were concerned. The universally known efficiency of our U-boat crews renders it very improbable that the firing on the boats, which by their very proximity would form an excellent target, was without effect.

Three boats escaped when the ship sank. In view of the danger of being drawn into the vortex of the sinking steamer, they had rowed away, and they were then in the open sea where only the perils of the sea surrounded them. These, however, at the time were not great. The wind and sea were calm. There is, therefore, no reason why the two missing boats, as well as the captain's boat which was

rescued, should not have remained seaworthy until the 29th of June, 1918, when, after the latter had been picked up, a search was made in the neighbouring waters. This search was thoroughly carried out by five warships, without a trace of either of the boats being discovered. The empty boat, which was encountered by the "Snowdrop," was evidently, having regard to the position where it was found and the description which was given of it, the abandoned boat of the captain.

As to the motive of Patzig the Court stated:

If the question is asked—what can have induced Patzig to sink the life-boats, the answer is to be found in the previous torpedoing of the "Llandovery Castle." Patzig wished to keep this quiet and to prevent any news of it reaching England. He may not have desired to avoid taking sole responsibility for the deed. This fits in with the descriptions given of his personality. He may have argued to himself that, if the sinking of the ship became known (the legality of which he, in view of the fruitlessness of his endeavours to prove the misuse of the ship, was not able to establish), great difficulties would be caused to the German Government in their relations with other powers. Irregular torpedoings had already brought the German Government several times into complications with other states, and there was the possibility that this fresh case might still further prejudice the

international position of Germany. This might bring powers that were still neutral into the field against her. Patzig may have wished to prevent this, by wiping out all traces of his action.

By sinking the life-boats he purposely killed the people who were in them. On the other hand no evidence has been brought forward to show that he carried out this killing with deliberation. Patzig, as to whose character the Court has no direct means of knowledge, may very well have done the deed in a moment of excitement, which prevented him from arriving at a clear appreciation of all the circumstances, which should have been taken into consideration. The crew of a submarine, in consequence of the highly dangerous nature of their work, live in a state of constant tension.

The Court decided that the resolution to exterminate the survivors was only made after the fruitless efforts to obtain evidence which would prove that the *Llandovery Castle* was being used for the transport of troops or munitions. This finding is important on the question, discussed in Chapter VI, whether the crime of the accused amounted to murder or manslaughter. The Court decided that murder had not been committed.

Several factors were present in this case, which tended specially to deprive Patzig of the power to arrive at a calm decision. He had said that he would torpedo a hospital ship, with all its character-

istic markings, in the expectation of being able to prove that it was being used for improper purposes. His hope was in vain. In spite of the most minute investigation, it was not possible for him to obtain any confirmation of his assumption. Then arose the question, how could he avert the evil consequences of his error of judgment? He had to decide quickly; he had to act quickly.

Referring to the share of responsibility resting on the accused officers, the Court found:

The two accused knowingly assisted Patzig in this killing, by the very fact of their having accorded him their support. It is not proved that they were in agreement with his intentions. The decision rested with Patzig as the commander. The others who took part in this deed carried out his orders. It must be accepted that the deed was carried out on his responsibility, the accused only wishing to support him therein. A direct act of killing, following a deliberate intention to kill, is not proved against the accused. They are, therefore, only liable to punishment as accessories.

Patzig's order does not free the accused from guilt. It is true that according to the Military Penal Code, if the execution of an order in the ordinary course of duty involves such a violation of the law as is punishable, the superior officer issuing such an order is alone responsible. However, the subordinate obeying such an order is liable to

punishment, if it was known to him that the order of the superior involved the infringement of civil or military law. This applies in the case of the accused. Military subordinates are under no obligation to question the order of their superior officer, and they can count upon its legality. But no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But this case was precisely one of them, for in the present instance, it was perfectly clear to the accused that killing defenceless people in the life-boats could be nothing else but a breach of the law. As naval officers by profession they were well aware, as the Naval Expert Saalwächter has strikingly stated, that one is not legally authorised to kill defenceless people. They quickly found out the facts by questioning the occupants in the boats when these were stopped. They could only have gathered, from the order given by Patzig, that he wished to make use of his subordinates to carry out a breach of the law. They should, therefore, have refused to obey. As they did not do so, they must be punished.

If Patzig had been faced by refusal on the part of his subordinates, he would have been obliged to desist from his purpose, as then it would have been impossible for him to attain his object, namely, the

concealment of the torpedoing of the "Llandovery Castle." This was also quite well known to the accused.

In assessing the sentence the Court considered as follows:

In estimating the punishment, it has, in the first place, to be borne in mind that the principal guilt rests with Commander Patzig, under whose orders the accused acted. They should certainly have refused to obey the order. This would have required a specially high degree of resolution. A refusal to obey the commander on a submarine would have been something so unusual, that it is humanly possible to understand that the accused could not bring themselves to disobey. That certainly does not make them innocent. They had acquired the habit of obedience to military authority and could not rid themselves of it. This justifies the recognition of mitigating circumstances.

A severe sentence must, however, be passed. The killing of defenceless shipwrecked people is an act in the highest degree contrary to ethical principles. It must also not be left out of consideration that the deed throws a dark shadow on the German fleet, and specially on the submarine weapon which did so much in the fight for the Fatherland. For this reason a sentence of four years' imprisonment on both the accused men has been considered appropriate.

Further, the accused Dithmar is ordered to be dismissed the service, and the accused Boldt is deprived of the right to wear officer's uniform.

The behaviour of the accused during the proceedings has not been such as to justify reducing the period of imprisonment by the comparatively short period, during which they have already been detained.

The decisions of the Court in this trial give rise to many important considerations, and these will be discussed later.

When the accused men received sentence, they remained stolid and unmoved. Neither had shown much emotion during the trial. Boldt struck me as a real brute, but Dithmar seemed to me less guilty than either Boldt or their absent commander, Patzig. Had Dithmar given evidence I think he might have been able to minimise his responsibility for the joint crime. Major Lyon, the doctor who was ordered out of the captain's boat on to the submarine, told the Court that, as he was leaving the submarine, one of the officers took him aside and gave him the hint "to clear off at once." In the life-boat Captain Sylvester told that he had been given a similar hint. It was clear that the officer who had said this was Dithmar; he may have been inwardly anxious to prevent success following the murderous intentions of his commander, which he was too cowardly to resist. This tallied fully with my reading of his character.

But as both Dithmar and Boldt refused to give evidence, both had to share the same fate. An important point arising out of this is that, if Dithmar gave this hint, he must then have known what the intentions of Patzig were. If this was so, Patzig's intentions could not have been formed suddenly, but must have been formed at least while the investigations were proceeding. But this question will be dealt with later in Chapter VI.

When the judges had withdrawn, I saw several members of the public go up to the condemned men and sympathise with them. There was an electric atmosphere both in the Court and amid the crowd outside. The British Mission retired quietly to its private room, and then left the Court by a side door, closely guarded by German police. Thus the possibility of any unpleasant incident was avoided.

CHAPTER V: THE BELGIAN AND FRENCH CASES

After the British cases of Heynen, Müller, Robert Neumann and Karl Neumann had been tried, the Court began to hear the cases submitted by Belgium and France. Four cases, involving charges against six men, were heard and all but one of these six men were acquitted.

This fact prompts inquiry, but it would not be fair, either to the Belgian and French witnesses and lawyers or to the German Court, if any attempt were made in this book to give an opinion about the merits of these trials. No British lawyer attended these trials and no record of the evidence is available; in criminal cases especially, the demeanour of the witnesses and of the accused and the manner in which they gave their evidence are matters of supreme importance. In two of these cases the Court definitely refused to accept the evidence submitted for the prosecution; it found that the witnesses were unreliable, that they were exaggerating or were giving accounts which did not tally with accounts which they themselves had previously given. Another factor to be borne in

mind in considering these trials is that in the last of them many of the witnesses for the prosecution were not heard. The French Legal Mission was withdrawn from Leipzig by the French Government as a protest against the conduct of the trials by the Court. The Belgian Mission also left. The von Schack-Kruska case was, accordingly, heard in the absence of many essential witnesses for the prosecution. Having regard to these facts, therefore, it is best in this book to give the judgments of the Court and to comment but little upon them.

In these, as in the British, trials Dr Schmidt presided over the German Court.

1. Max Ramdohr.

Ramdohr was accused by the Belgian authorities of having been guilty of numerous acts of cruelty to Belgian children at Grammont (Geeraardsbergen) between November, 1917, and February, 1918. He was at the time an officer in the German Secret Military Police, and had been in civil life a law student in Leipzig. His age at the time of the trial was thirty. The following extracts from the judgment of the Court explain the events which led up to the prosecution.

The accused, after studying law for two terms, enlisted upon the outbreak of war as a volunteer in

the 7th mounted Jaeger Regiment. He took part in several battles, was wounded and received the Iron Cross of the second class. After his convalescence he was transferred on 8th August, 1916, to the 2nd Battalion in Ghent as fit for garrison duty and was employed in the Secret Military Police of the army in the field.

He received his theoretical and practical training in the duties of the Secret Military Police from the Military Police Commissiary Dirr in Ghent, who was his immediate superior. The main subject which he studied was the detection of spies. Within his duties fell also inquiry into attacks on the railways which might endanger the transport of German troops or Commissariat or prejudice the army generally. After the end of his training, the accused was appointed head of the Military Police at Grammont. There he was called by the inhabitants "the White Man" ("de Witte") while his assistant, Dr Zahn, who wore eye-glasses, was nick-named "Goggles" ("de Bril"). In their former posts at Termonde they had been called "the terrors of Termonde."

The Court then went on to explain the functions of the Secret Military Police and the situation with which Ramdohr was confronted.

The fighting in Flanders in 1917 involved about a million combatants on the German front. In consequence of the very heavy loss in men and

material, extensive military transport was essential. It came to the knowledge of the Directorate of Military Railways and of the local supervisors at Brussels, that there had been repeated acts of sabotage of every kind on the railways. Considerable disturbance of railway traffic was thereby caused. It was necessary, therefore, to prevent such attacks ruthlessly on sections which were so vital for the maintenance of the army. The railway station at Grammont was of particular importance as it was the junction of the Ghent to Mons and the Charleroi to Kortryk lines. It was urgently necessary to discover and punish those responsible for the raids on this station.

On several days in September, October and in the beginning of November, 1917, *interruptions of the signal wires were observed near to the southern entrance to the Grammont Railway Station. The railway trains were therefore obliged to stop on the open track. This delay resulted in the plundering of provisions, and the transport of troops was gravely endangered. The accused conducted a police inquiry in Overboulaere while Dr Zahn conducted the inquiry in Nederboulaere. In the course of these proceedings the accused arrested various Belgians, repeatedly examined them and then drew up a report. After the decisions of these Courts had been forwarded to the competent authority, proceedings were taken by the latter.*

Several of the arrested Belgians were boys who were below the age of criminal responsibility. The German Penal Code provides (Section 55) that " a person who at the time he committed the act had not completed his twelfth year, cannot be prosecuted for such act," and (Section 56) that between the ages of twelve and eighteen he is " to be acquitted if at the time that he committed such act he did not possess the intelligence necessary to the knowledge of its criminality." At a court-martial, which was held later, five Belgians were condemned to imprisonment for terms of from two to three years.

The Court proceeded:

According to the records, all the Belgians admitted their guilt during the inquiry and those who were of criminal age admitted it later at the court-martial. They later asserted, however, that they had been unjustly arrested and had been compelled by the accused to confess by means of blows from his hand or with a stick or leather strap or by such like ill-treatment.

There were detailed charges against the accused that he had confined the children in cells which were unfit for their reception, that he had terrorised them by striking them and pushing their heads into buckets filled with water, and that he had inflicted numerous other cruelties upon them. The Court heard the evidence of the children, many of whom

were still too young to enable their evidence to be given on oath. In the end the Court found the evidence so contradictory and unsatisfactory that it could not convict the accused. The Court found:

In testing the credibility of these statements of the witnesses it must be considered that the witnesses have shown a strong bias against the accused, which can be easily explained by the relations then existing between them. . . . Probably the witnesses who make these charges regarded the accused as the cause of all their suffering. At their youthful age they are not sufficiently unbiased to realise that the accused merely fulfilled his duty when he zealously followed up the prosecution of a crime which had caused public danger. It has been unanimously stated by German witnesses, who had plenty of opportunities for observation, that at the examination during the war of these youthful Belgians there was frequently a strong inclination to tell fictitious tales and to exaggerate. It has to be considered also that the Belgian population had been systematically informed for years past about war atrocities alleged to have been committed by the Germans. This information came to them by word of mouth, writings and pictures, and must in course of time have exercised a suggestive influence. Experience teaches that children, with their quick imagination, easily succumb to such influences.

Under such circumstances it would be quite comprehensible, from a psychological point of view, if each of the witnesses consciously or unconsciously felt that it would be a meritorious service for him to contribute his share to the charges against the accused and so to arrange his evidence that it agreed as far as possible with that of the other sufferers. The very duties of the accused made those who were arrested regard him as the common enemy to be fought with united forces, for on the accused lay the duty of ruthlessly prosecuting a war crime which deserved death.

The Court also found:

The statements of the witnesses examined under oath cannot, on closer examination, be looked upon as sufficient for the conviction of the accused. To a greater degree this applies to the statements of those witnesses who, on account of their incapacity to be sworn, could only be examined without the oath. Children of so tender an age, even when not influenced by third parties, have often an extravagant imagination, which allows harmless incidents to grow into sensational events.

In another part of its judgment the Court stated that " the possibility of mass suggestion is not to be ignored."

On the question of the responsibility of the accused for arresting the children, the Court quoted an army order, issued on 3rd October, 1916, which

laid it down that, " The Secret Military Police are authorised to make arrests and to set at liberty persons arrested by them. They are to decide individually and independently as to the necessity for, and the duration of, the arrest. The procuring of judicial warrants of arrest or the observance of other formalities is not necessary. The Commandants have to admit into the prison persons arrested by the Secret Military Police." The Court emphasised that this was " a deliberate deviation " from the general criminal law of Germany, which provides, as does our own, that persons arrested must be brought at once before a magistrate. But the Court held:

This Court has not to examine whether the general order was justified by the necessities of war. The accused was not criminally guilty when he acted in accordance with this order.

The Court added, however, that:

Only those persons should be arrested against whom either judicial or other measures were contemplated. How to proceed with children below the criminal age was the subject matter of neither instructions nor advice.

The accused pleaded in his defence " that the duration of the arrest lay solely at his discretion, and that he never extended the period of arrest longer than necessary." He maintained further that " behind the children manifestly stood adults, who

had co-operated in interfering with the signals and who were the real perpetrators. In order to find them out, it was necessary to arrest the children and to interrogate them while under detention. The fact is that adults availed themselves of the assistance of children."

In his speech the German State Attorney asked the Court to find Ramdohr guilty, and requested a sentence of two years' imprisonment.

But, weighing the evidence of the Belgian witnesses against the evidence of the accused, the Court came to the conclusion that:

There can be no question of the accused having rendered himself guilty of a deliberate illegal arrest when he kept the children in confinement until the necessary inquiries were over.

The Court did not contest that the accommodation provided for the children while under arrest was defective. But it held:

No kind of responsibility whatsoever rested upon the accused for the defective condition of the cells which were arranged in the old Belgian police barracks. He also cannot be held responsible for the insufficiency of the diet, as these matters were not part of his duties. The prison was not under him, but under the commanding officer, and the accused had not the slightest influence upon its interior management. No proof has been forthcoming that a reduction in the food or a darkening

of the cells was decreed as a disciplinary punishment on the express instructions of the accused.

In its judgment the Court went in detail through the evidence of each witness and pointed out that there were either inherent improbabilities or that the evidence given was inconsistent with the evidence given by the same children at the preliminary hearing before the Belgian Judge. The following extract from the judgment is typical of many. It relates to the sworn evidence of Albert Vidts, aged seventeen years at the date of the trial.

According to his declaration before the Belgian Judge of Inquiry, the accused threw him with great violence first against the stove and then against the cupboard, so that the blood flowed freely from his upper lip and forehead. The accused then gave him a handkerchief to wipe off the blood. On the other hand, at this trial the witness denied that the accused gave him a handkerchief. Further, according to the statement of the witness before the Belgian Judge, the accused placed a revolver over his heart about twenty times and threatened to shoot him, but, according to his deposition now, this took place once only. This contradiction is the more strange as it was a question of inhumanity which could not so easily escape the memory.

Just as little proof is there of the assertion of the witness that the accused pressed his head under water. Such treatment has indeed been affirmed

by other witnesses also, who spoke first of a barrel and finally of a bowl of water. The examination of other witnesses has, however, proved that there was no water in the examination room and that none was brought in by the guard.

After his arrest the witness Vidts, it is alleged, was bound to the accused's cycle by a strap slung round his neck and was obliged to run behind the cycle. While passing over the railway rails he fell and injured his finger, which got between the spokes of the wheels when he fell. The cycle ran on regardless of this hindrance. In spite of the improbability of such a thing, the witness persisted in his assertion.

Just as fabulous sounds his description of how he was bound hand and foot by the accused and hung up on a large hook. Before the Belgian Judge the witness timed this proceeding as having taken place from nine o'clock in the morning until nearly eight-thirty in the evening, whereas according to his evidence now it is alleged to have taken place at night. No witness examined on the point was able to confirm the existence of the hook.

At the court-martial, the witness alleges, he did not have an opportunity of speaking, although it lasted from eight o'clock in the morning until midday. Before the Belgian Judge he also stated that the judges severely censured "Goggles" for his ill-treatment of children who were under arrest, and

ordered him to be removed in iron chains or handcuffs. According to his evidence now, this was only a report which he had heard. The alleged reprimand is proved to be pure invention.

The witness alleges that he confessed solely to avoid further torture, although he was "innocent." In strong contrast with this, there remains the fact that at the court-martial he made a detailed confession, completely free from any influence and on this ground was condemned to two and a half years' imprisonment for two cases of deliberately endangering railway transport and for two cases of trespassing on railway property. The improbabilities, to which special attention has been drawn, and the manifest misrepresentations necessarily evoked so strong a doubt as to the credibility of this witness that no weight of importance could be placed upon his statement, especially as the expert Dr van der Kelen has given his opinion that the witness is suffering from a diseased heart. This may also have been not without influence upon his power of invention.

No useful purpose would be served by setting out fully the Court's detailed examination of the evidence given by the witnesses. One, a railwayman, Marcel van Wayenberghe, who was eighteen years of age at the time of the trial:

First denied on oath and then, but only after solemn warning, admitted that he made a confession

of his guilt before the court-martial. The confession is proved, in a manner excluding all doubt, from the contents of the records of the court-martial, which show that the witness set forth in detail how he had intentionally interfered with the signal wires, so that the trains might collide.

The same boy in his evidence at the trial:

For the first time brought forward the assertion that "Goggles," during his examination by the accused, suddenly sprang out of the cupboard with a police dog in order to frighten him. This statement in itself sounds quite fantastic. The officers of the Military Police had no police dog, and this has been proved at the trial.

Another boy spoke of the existence of this dog, but he "merited just as little belief." Regarding Albert de Schauwer, a factory hand of sixteen at the time of the trial, the Court found:

He admitted at the court-martial that on five separate occasions he had interfered with the wires alongside the railway track, with the object of causing a collision between coal trains. His statement on oath that he made this confession out of fear of ill-treatment is completely unworthy of belief. When he confessed he was withdawn from all influence of the accused.

Regarding Robert van Wayenberghe, a schoolboy, the Court found that his evidence "exhibits important contradictions."

Before the Belgian Judge he declared that after his arrest he had been bound; at this trial he has, on the other hand, admitted that he was not bound. He could not clear up the contradiction. Further, he had previously declared that he had been beaten "probably about six times," whereas he now states that this had happened probably thirty times.

Dealing with the character of the accused, the Court found that one of the Belgian witnesses (Moreels) had admitted at the trial that the "Witte" had been "good with the people," and that things generally had been "not bad." The Court also found:

A cruel ill-treatment of defenceless children would show a particularly brutal disposition. The conduct of the accused was, however, according to official records, "excellent." An altogether favourable, indeed a brilliant, testimonial to his character is given by persons who knew him and whose judgment carries weight. He is characterised as "exceedingly correct" and "unnaturally calm," as "absolutely incorruptible," "quiet and deliberate," and as a man of "refined sentiments." The announcement in the newspapers that the accused had been called among the Belgian population the "Terror of Termonde" produced nothing but laughter. Major Staehle declares that the accused was not sufficiently energetic, and that, therefore, the question of relieving him had been considered.

According to the statement of the witness Dirr, the accused was one of his most quiet officers. All the witnesses are of the same opinion that they could not believe the accused to be capable of inhumanity, having regard to their knowledge of his personality and character.

Further, the Court found:

At the frequent inspections of the prison no irregularity of any kind nor injuries to the children were at any time noted, although Adjutant Schwarz came daily to the police barracks, and various wishes and complaints from the prisoners were frequently brought before him. The boys never approached the Governor of the prison with complaints of their ill-treatment, in spite of the confidence which they otherwise accorded him.

Finally, on the allegations of personal cruelty, the Court found:

The obscurities, contradictions, misrepresentations, and in part obvious lies in the evidence of witnesses are of such a nature that in no given case can the complete proof of ill-treatment of the boy in question be considered as established.

The accused was, therefore, "acquitted to the full extent of the charges brought against him." But none the less the Court held that "a suspicion cannot be ignored, that the accused, in his endeavour, commendable in itself, to carry out his instructions, employed measures which were legally forbidden.

In an official report of 22nd December, 1917, he himself remarked that the children who were arrested had made confessions ' after severe examination.' "

But the Court came to the conclusion that " the evidence does not suffice to prove with certainty any considerable ill-treatment of the children which can be characterised as bodily injury. The conditions demanded by the Penal Code are not fulfilled."

This trial was beyond doubt the least satisfactory of all. One can have little doubt that, details apart, very real suffering was caused to these children. Reading the judgment of the Court, it is difficult to believe that for this cruelty Ramdohr was free from blame. But in criminal trials it must often happen that one has a general feeling that the accused cannot be innocent, although the Court finds him " not guilty." Crimes have to be proved up to the hilt. A great British lawyer, Lord Kenyon, once said that " If the scales of evidence hang anything like even, throw into them some grains of mercy." I make no attempt to say whether in this case the scales of evidence did hang anything like even, but there can be little doubt that the nature of the evidence for the prosecution made the task of the Court an exceptionally difficult one. Some of the " inconsistencies " complained of in the judgment strike one as trivial. But any lawyer knows the difficulty always associated with the evidence of children. One is tempted to wonder why a case was selected which

depended almost solely upon such evidence. The answer is probably that this case, by the very reason that children suffered, aroused the most public indignation in Belgium. But the volume of public indignation is a hopeless guide in judicial matters, where the personal guilt of the accused, not the vices of a system, have to be proved.

The Ramdohr case was undoubtedly a misfortune. Belgium suffered untold miseries during the war at the hands of Germans, and after this trial Belgians naturally felt that their injuries had not been officially denounced. The bed-rock fact is, I have little doubt, that there was cruelty to children at Grammont, and this will probably be the verdict of history, but the verdicts of history can never be always the same as the verdicts of criminal courts, especially when verdicts of "not guilty" are given.

2. Lieutenant-General Karl Stenger and Major Benno Crusius.

This was a prosecution at the instance of the French Government.

General Stenger was charged with having, in his capacity as Commander of the 58th Infantry Brigade, issued in August, 1914, an order to the effect that all prisoners and wounded were to be killed. The alleged orders were:

"No prisoners are to be taken from to-day onwards; all prisoners, wounded or not, are to be killed," and

"All the prisoners are to be massacred; the wounded, armed or not, are to be massacred; even men captured in large organised units are to be massacred. No enemy must remain alive behind us."

The State Attorney did not bring in any charge against General Stenger, but requested a decision, under the special German law of May, 1921, whether he in fact intentionally killed prisoners or wounded men or induced his subordinates to commit such a crime.

Major Crusius was charged with having passed on General Stenger's order, and with having thereby caused the killing of several French wounded. He was further charged with having on separate occasions himself intentionally killed several (seven at least) French prisoners or wounded, and with having induced his subordinates to do the same.

The Court soon came to the conclusion that wounded soldiers and prisoners had been killed. In its judgment it reviewed the accusations under the two headings of the events at Saarburg on 21st August, 1914, and those in a wood near Sainte Barbe on 26th August, 1914.

With regard to the former date, Major

Crusius, the Court reported, gave the following account:

Between six and seven o'clock in the morning of 21st August the brigade was standing in order of battle near the chapel at the eastern exit from the Saarburg drill ground, with the 1st Battalion of the 112th Infantry Regiment in the front line. General Stenger, Neubauer, Müller, Schröder, Crusius, and other officers of the 1st Battalion were standing not far off, talking about the events of the battle of the day before. General Stenger gathered the officers of the 1st Battalion of the 112th Regiment around him and gave the order that all wounded left on the battlefield were to be shot.

The Court reported:

Crusius unhesitatingly construed these instructions as a brigade order. No wounded man was shot on the drill ground itself, but it might well be that, in execution of the order, they were shot soon after, as he concluded was the case from shots from the front lines which were not necessitated by the state of the battle.

The account given by General Stenger, as summarised by the Court, was as follows:

It was true that, during the conversation near the chapel on the morning of 21st August, what happened on the 20th and the night following was discussed, but not only had he certainly not given

an order of such a nature, but, as far as he could remember, he did not say anything at all which could in any way have been understood or interpreted in the sense imputed by Crusius. He said nothing about the shooting of wounded. Moreover, in the state of affairs at that time there was nothing to induce him to do so.

During the march past of the troops across the parade ground he dismounted with his personal staff. Suddenly isolated rifle shots were heard, presumably proceeding from French wounded, who, according to the statement of one of his companions, fired from the rear. Thereupon he declared to those near him that such enemies should be shot there and then. The remark, as was clearly to be seen from its manner and its contents, only referred to enemies making treacherous attacks, resuming hostilities; it did not refer to defenceless wounded men who were incapable of fighting, and even in this interpretation it had not been an order, but an incidental expression of opinion.

Crusius had no knowledge of this incident.

There was, therefore, a definite issue of fact: did General Stenger issue an informal order to shoot down men who were abusing the privileges of captured or wounded men, or was his order to the effect that all prisoners and wounded were to be put to death? The Court held that in the former case such an order would have been justified:

Such an order, if it were issued, would not have been contrary to international principles, for the protection afforded by the regulations for land warfare does not extend to such wounded who take up arms again and renew the fight. Such men have by so doing forfeited the claim for mercy granted to them by the laws of warfare. On the other hand, an order of the nature maintained by the accused Crusius would have had absolutely no justification.

Strong evidence was given at the trial to the effect that General Stenger could not possibly have issued any order to kill prisoners or wounded men indiscriminately. Thus the Court found:

The commanders of the two regiments belonging to the 58th Brigade, Neubauer and Ackermann, declare that the promulgation of an order, such as Crusius insists he heard from General Stenger's lips during the halt near the chapel, was quite impossible. They did not hear such an order, and, had it been issued, they must have heard it. In their position as regimental commanders they would have received official intimation of the order.

The witness Heinrich, Lieutenant in the Reserve, at the time orderly officer to the 58th Brigade, was, according to his evidence, present within hearing at the time of the conversation near the chapel, except for a short interval, during which First-Lieutenant Recknagel took his place. Both

officers have declared emphatically that the order which Major Crusius maintains was given, or any utterance of a similar nature which might have been interpreted as such an order, was not given in their presence. Heinrich has added that General Stenger always dictated to him the brigade orders intended for the troops.

The witness Albansröder heard, from a little distance off, a conversation between General Stenger and five or six officers about the method of fighting adopted by the French at Saarburg, namely, the shooting from the rear by wounded men. He said that General Stenger expressed his opinion about this excitedly and angrily, and said words to the effect that no quarter should be given to the French who did such things, but they should simply be shot. The witness knows nothing of a brigade order to this effect.

A good deal of such evidence was given. Several witnesses made it clear, however, that very soon after this conversation there was a widespread impression that General Stenger had given the order. Thus:

The witness Kaupp confirmed the handing of the "order," as stated by Major Crusius, after the conversation of the officers near the chapel; he understood it in that way and gave instructions accordingly to his men.

The witness Ernst stated that immediately after

the conversation an order was passed along the 3rd Company to the effect that no prisoners were to be taken. Colour-Sergeant Flörchinger doubted the accuracy of the order and made further inquiry as to its source. The answer was: "Brigade order." Flörchinger forbade his men to carry out the order. While going across the parade ground, the witness heard that Major Müller, in the immediate neighbourhood of Major Crusius, gave the order to shoot the French lying in a hollow. One of these Frenchmen is reported to have been killed.

Dr Döhner, army doctor with the 112th Infantry Regiment, was in the firing-line with the 1st Battalion, where dead and wounded were lying. There he saw Major Crusius, with flushed face and bulging eyes, his revolver in his hand, run across the square, and heard him shout loudly: "Will you not carry out the brigade order?" One of the men told the witness, "We are to shoot the Frenchmen lying there." The witness declared that he would not do it. The other men refused also, as they could not shoot defenceless men. So far as the witness knew, no shooting took place.

But there can be no doubt that shooting did take place. Another witness, Grienenberger, told that Major Crusius passed on the "order" immediately after the conversation, and that he "stepped out in front of the company, calling out, 'All wounded coming across are to be shot dead.'" Further:

One of the men, named Jägler, about ten minutes after this order was issued, shot dead a wounded Frenchman, who lay, without a rifle, with his back against a sheaf of corn, and who raised his hands begging for mercy. The witness reproached Jägler for doing this, but only received the answer, "That's no concern of yours; it is an order." Farther back more shots were heard, and his comrades told the witness later that the French wounded were shot down en masse.

There was a good deal of other evidence to the same effect. One witness (Schmerber) said he thought that he could be sure that Major Crusius had himself fired with his revolver at wounded Frenchmen lying there, and that the Frenchmen were not defending themselves. He thought that the shots could have been fired by no one but Major Crusius. A soldier named Klehe gave the following horrible evidence:

When moving in extended formation in the firing-line Major Müller and Major Crusius marched together in front of the 3rd Company. There lay a Frenchman to all appearance dead. Major Crusius poked him repeatedly with his foot. The third time the man moved and opened his eyes. Major Crusius said to the witness, "Carry out your order," and repeated this, but without success. Then Major Müller intervened with the words, "It is your duty to carry out your brigade order." At

the same time he pointed with his revolver at the man lying on the ground. Klehe aimed at the head of the Frenchman and fired.

There was no evidence, save that of Major Crusius, actually to the effect that General Stenger had issued the order. A Dr Delunsch gave evidence of a conversation which he had had with a Lieutenant Petersson, in which the latter said to him: " Don't take any notice of this brigade order; it is not being carried out. Stenger gave it in a moment of agitation, because the evening before he got into machine gun fire." But Lieutenant Petersson denied ever having mentioned any such order, and the Court held that Dr Delunsch's memory was " unreliable."

As to General Stenger the Court found:

The accusations made are refuted. None of the officers who were in the immediate neighbourhood of General Stenger, and to whom such an order must have been addressed, heard anything at all about it. Only Major Müller and Major Crusius discovered in expressions of anger at the opponents' method of fighting a brigade order. . . . An order of the nature maintained by the accused Crusius would have been in absolute contradiction to the character of the accused Stenger.

As regards Major Crusius the Court found as follows:

The accused Crusius frankly admits the promul-

gation of the supposed brigade order and does not deny that it was carried out in a number of cases. . . . It has been established that the accused Crusius caused the death of an undetermined number of men at Saarburg in Lorraine on the 21st August, 1914, through negligence. . . . The number of deaths caused in this way, about the illegality of which nothing further need be said, it has not been possible to determine.

The accused Crusius acted in the mistaken idea that General Stenger, at the time of the discussion near the chapel, had issued the order to shoot the wounded. He was not conscious of the illegality of such an order, and therefore considered that he might pass on the supposed order to his company, and indeed must do so.

So pronounced a misconception of the real facts seems only comprehensible in view of the mental condition of the accused. Already on 21st August he was intensely excited and suffered from nervous complaints. The medical experts have convincingly stated that these complaints did not preclude the free exercise of his will, but were, nevertheless, likely to affect his powers of comprehension and judgment. But this merely explains the error of the accused; it does not excuse it. . . . Had he applied the attention which was to be expected from him, what was immediately clear to many of his men would not have escaped him, namely,

that the indiscriminate killing of all wounded was a monstrous war measure, in no way to be justified.

Major Crusius was certainly familiar with the regulations, according to which the written order forms the basis for the conduct of troops.

The Court accordingly found Major Crusius guilty of " killing through negligence."

With regard to the events on 26th August, 1914, the Court found:

On the following days the 58th Infantry Brigade continued the pursuit of the enemy in a south-westerly direction. On 25th August Thiaville was occupied. The French retired to the wood of Sainte Barbe, to the south and west of it, where they entrenched themselves very strongly.

Major Crusius gave the following evidence:

" *We had been in Reserve and had been marched out between two and three o'clock. General Stenger, who was in front with the commander of the regiment, listened to the orders which Neubauer gave out to the battalion commanders. Just before the latter left to carry out the orders, General Stenger said, 'No prisoners will be taken.' These words which I, as one of the front company commanders, distinctly heard, I understood as an order. I passed the order on to the two companies which were under me. There was a feeling of great bitterness in the whole troop*

because it was said that in front our men were again being shot down from the trees."

General Stenger's account was summarised thus:

His task had been to clear the wood and to cut off the retreat of the enemy. At mid-day, numerous reports had come in of the French method of fighting, feigning to be dead or wounded, or apparently offering to surrender and then from the rear shooting with rifles and machine guns at troops that passed by. Owing to this, as the commander responsible for the well-being of the troops, he considered himself in duty bound to draw attention to the risks which, under such conditions, must arise from attempting to bring back as many prisoners as possible. With this intention, but not at all in the form of an order, he said something like the following: "The French are reported to sit in the trees and shoot down from above; also wounded shoot from the rear. Be on the look out for this! It is not a question of taking prisoners (or, possibly: we have no use for prisoners to-day), but of defending oneself and protecting oneself from the treachery of the enemy. Shoot the fellows down from the trees like sparrows!" His words only exhorted to caution and energetic measures against treacherous attacks, but were not intended at all to apply to wounded, defenceless enemies, or those who seriously offered surrender.

Commanders of regiments concerned gave evidence that they knew nothing of any order to kill prisoners or wounded men. One of them declared that that afternoon he was always in the immediate neighbourhood of General Stenger, and must have heard the supposed order. Many other witnesses of all ranks spoke to the same effect.

Before the trial, one witness, Heinrich, had stated that on this day, about five o'clock in the afternoon, he met the accused with Captain Fröhlich, and that the latter told him that General Stenger had called out to the men going into the battle that they were not to take any prisoners, but to shoot everyone down that came in the line of fire. At the trial this witness corrected the purport of Fröhlich's conversation with him and maintained that he was told that General Stenger shouted to the troops to be on the look out, and to shoot the men firing from the trees. There were other instances in which evidence incriminating General Stenger, which had been given at the preliminary inquiry, was explained away at the trial. One witness, a N.C.O. named Kleinhans, gave the following evidence:

Between one and two o'clock in his immediate neighbourhood Colour-Sergeant Eldagsen, during a rest in the wood, took a paper from his pocket-book and read something like the following to the company: "From to-day onwards, no more prisoners are to be taken. All prisoners, wounded

or unwounded, are to be shot down. This order comes into force immediately. Signed, Stenger." The witness, appealing to the demands of humanity and the increased bitterness of the enemy if such measures were adopted, refused to carry out the order, whereupon Eldagsen threatened him with a court-martial.

Eldagsen, another N.C.O., denied the incident on oath and the Court refused to accept Kleinhans' evidence.

In the end the Court accepted the explanation given by General Stenger, and in its judgment the Court pointed out:

As a matter of fact on the 26th of August, as on the preceding days, many prisoners were taken and were marched past General Stenger without any objection on his part.

The Court found further:

On the 26th of August, General Stenger issued neither in writing nor by word of mouth, a brigade order of the nature stated. The admonitions, incitements and warnings delivered by him in conversation to those near him, and shouted out to the troops marching by, referred unmistakably only to defence against foes fighting treacherously.

The charge brought against General Stenger under this head proves to be altogether unjustified.

As to Major Crusius the Court found:

The accused Crusius does not dispute the fact

than an order to take no prisoners and give no quarter was passed on by him to his company as an order of General Stenger and was several times put into force during the ensuing fight in the wood on the afternoon of 26th August.

The Court then proceeded to discuss the question whether Major Crusius could be held responsible for his actions on the 26th August. The Court reported:

To come to a decision respecting the charge brought against him on this account, it is necessary to discuss the question as to whether such cases of killing or wounding defenceless or surrendered enemy soldiers as were proved, should, in so far as they were caused by the behaviour of the defendant, be laid to his charge from the point of view of premeditation or of culpable negligence.

The test applied by the Court was Paragraph 51 of the German Penal Code. This provides that "there is no criminal act if the doer at the time of his act was in a state of unconsciousness, or if his mind was deranged so that there could be no free volition on his part." The Court found:

The medical experts have uniformly and convincingly demonstrated the possibility, nay, the overwhelming probability, that, already at the moment when the alleged brigade order was passed on in the afternoon of the 26th August (not merely at the time when it was executed), the accused was

suffering from a morbid derangement of his mental faculties which rendered impossible the exercise of his free volition. These experts do not hold that this was already the case on 21st August. The Court shares their view.

According to the evidence it was only in the late afternoon of the 26th August that a complete mental collapse, a state of complete mental derangement excluding beyond any doubt all criminal responsibility, can with certainty be said to have occurred; at the time when the accused ran back out of the wood in a state of distraction, with flushed face and protruding eyes, rushed towards Dr Döhner, clutching him by the arm and uttering despairing cries, and gave people the impression that he was a madman. The experts are, however, agreed in thinking that his condition was not of sudden and immediate occurrence, but developed out of nervous disorders already existing, as well as out of the exceptional excitement of the battles of Mulhausen, Saarburg and Sainte Barbe, and that it gradually got worse.

As in accordance with practice, reasonable doubt as to the volition of the guilty party does not allow of a pronouncement of guilt, no sentence can be passed against Crusius as regards the 26th of August. In respect of this part of the indictment the accused Crusius must be acquitted.

The accused is covered by the exonerating

provision of Paragraph 51 *of the Penal Code as regards the acts of the* 26*th August.*

The State Attorney had requested a verdict of guilty on both charges, and a total sentence of two and a half years' imprisonment. On the question of sentence for the charges relating to the events on 21st August, the Court found:

In deciding upon the punishment, account must be taken, in mitigation of his offence, of the defendant's former absolutely blameless moral and service conduct and of his limited faculty of volition when the act was committed, due to nervous troubles and intense excitement. On the other hand the extremely serious consequences entailed by his behaviour must be considered, not only as regards those directly affected thereby, but also, in a far wider sense, from the point of view of the prestige and good name of the German Army. Imprisonment for two years is, therefore, a proper punishment.

The accused Crusius is sentenced for homicide caused by negligence to two years' imprisonment and to deprivation of the right to wear officer's uniform. He is acquitted in respect of all other charges. The period during which he has been detained on remand is to be deducted from the sentence.

In considering this case, much of what I have written in regard to the Ramdohr case applies.

Reading the judgment, it is very difficult to suppress an underlying suspicion that some words were used by General Stenger which could reasonably have been interpreted as an order to kill the prisoners and wounded. The evidence of Kleinhans was very damaging, but the Court found that it was inconsistent with other evidence, and that on other points the witness was unsatisfactory. That any formal order was given was certainly not proved, but in fact the judgment of the Court scarcely convinces that the General did not in fact encourage his subordinates to commit the dastardly acts which were undoubtedly committed. But once again it has to be remembered that a general feeling of suspicion is not the equivalent of legal proof. It is not for an accused man to prove a negative; it is for the prosecution affirmatively to prove his guilt.

The sentence of two years' imprisonment on Major Crusius certainly appears lenient, but should be considered in the light of essential factors which will be discussed in Chapter VI. That he was unbalanced on both the days in question can scarcely be disputed, and that on 26th August he was not responsible for his actions seems to be, at least, possible. In Chapter VI the general question of sentences will be discussed, and it would be best to reserve our judgment until the considerations there set out have been taken into account.

3. First-Lieutenant Adolph Laule.

The main facts of this case, which was brought at the instance of the French Government, are set out in the following extracts from the judgment of the Court. The State Attorney made no charge, but, as in the preceding case of General Stenger, asked for the findings of the Court upon the charges made by the French Government.

The accused, as lieutenant in the 112th Infantry Regiment, was leading the 12th Company, when the latter entered the village of Hessen on the morning of 21st August, 1914, after the battle of Saarburg. He is charged with having intentionally and deliberately caused the killing of the French captain, Migat.

The French captain, Migat, was, on that morning, fetched by German soldiers out of the cellar of an inn, situated on the road which crosses the village of Hessen from north to south. After he had sat in front of the inn for a time, he succeeded in getting along the road as far as the northern cross-roads. Here he was shot down by soldiers. Twelve out of the thirteen witnesses have described the occurrence. Their statements do not tally in every detail, but they point with certainty to the following facts:

Captain Migat, an extremely tall and powerful man, had a not very conspicuous blood-stained

bandage round his neck and part of his head, and had on him a private's belt with side-arm, entrenching tool and revolver holster. Presumably he had slept while his contingent had marched off.

He would not allow himself to be made a prisoner, even after the accused had repeatedly called on him in the French language to surrender. He repulsed all attempts to take the belt away from him. He flung his arms about him in such a manner that Rifleman Greiss was knocked down and the accused stumbled backwards. He did not give in, even when the accused pushed aside the bayonet which Rifleman Greiss was on the point of drawing against the Frenchman. The accused again summoned him to surrender, and arranged to have him removed. His resistance lasted so long that some artillerymen who were passing shouted that he ought to be shot, and the people standing by wondered at the patience of the accused.

In the vicinity of the cross-roads, the captain attempted to free himself from the men who accompanied him. Then the accused called: "Two men here!" with the intention of overpowering him. Two soldiers seized the officer on his right and left sides. He shook them off and started hurrying towards the direction in which the French troops were. Then both soldiers fired on the captain, who fell dead.

The Court found that the French captain was

drunk at the time, but did not cite the evidence upon which this conclusion was based. The principal question discussed in the judgment was whether or not the accused himself fired at Captain Migat or ordered his men to fire. Several German witnesses had given evidence at the preliminary hearing to the effect that the accused had given the order. Thus the Court reported:

Dr Viktor Delunsch, who was staff doctor in the 3rd Battalion of the 112th Regiment at the time, has further explained the statement he made on 28th October, 1920, *in this sense that he now only expresses it as his opinion that at the cross-roads a number of soldiers (about one section) fired simultaneously on the captain; he had taken it for granted that this had been done by order, and that the accused had given the order, as he was the only officer present at the time. But an error as to the number of soldiers firing was easy, and at all events, there is no foundation for the conclusion that, because several soldiers fired at the same time, the accused must have given the order.*

Dr Georg Müller, chief doctor in the same battalion at the time, has stated: At the junction of the roads, the soldiers formed a circle round the officer. Then the circle opened and the officer moved forward. Then the deadly shots followed. He has not maintained his evidence of 28th October, 1920, *according to which the accused made*

the captain march in front of a platoon, that the soldiers had shot as a firing party, and that he was of the opinion that the accused had given the order to shoot.

Another German witness revised at the trial an earlier account which he had given.

The inn-keeper Geisser and the merchant Cronenberger have testified that the accused had called, "Two men!" and that immediately afterwards the soldiers shot the captain. They may not have noticed his movements between the call and the shooting, and at any rate they know nothing of an order to shoot from the accused. Geisser, it is true, addressed on 29th June, 1921, to the "Muhlhaus Tageblatt" a letter which was printed therein on 1st July, 1921. This letter was as follows: "Lieutenant Laule gave the order to shoot the captain," but in his evidence he has not mentioned this order, nor has he repeated the statement that Captain Migat had no weapons on him when made a prisoner. The witness now says that he did not see such weapons.

The Court found:

All the eye-witnesses are unanimous in stating that the accused himself did not shoot. None of them heard the accused give the order to shoot the captain. As it was not heard, it shows that it was not given, for, if he had given the order, it must have been heard. The French officer, owing to his

truculent attitude, might have brought about an attack on the German soldiers, who were only in small numbers, from French prisoners in the neighbourhood, or from French soldiers who might have been hiding in the village. The French officer was not yet a prisoner, as he persistently resisted capture. He was killed by the German soldiers of their own accord as he would not cease continuing to struggle.

The Court accordingly found that "the accusation has proved false," and "the innocence of the accused is proved and he is acquitted."

4. Lieutenant-General Hans von Schack and Major-General Benno Kruska.

Both the accused Generals in this case were acquitted by the Court, and as regards both the German State Attorney asked for an acquittal. The facts as found by the Court are as follows:

In the beginning of September, 1914, *the acting General in command of the* 11*th Army Corps in Cassel received from the Ministry of War, by telegram, information that it was intended to form a prisoners' of war camp for fifteen thousand men at Cassel.*

In accordance with this order a camp was formed in the immediate neighbourhood of the town of Cassel, in the district of Niederzwehren. The erection of the barracks necessary for the housing

of the prisoners gave rise to some difficulties owing to war conditions, but these were overcome in a very short time. First of all, tents were set up with great rapidity. At the same time a beginning was made, on a part of the camp which was situated somewhat higher, with the construction of large wooden barracks. These were continued so that they could be used before the beginning of the winter.

As regards questions of discipline, the newly constructed camp was at first under the control of Lieutenant-General (retired) Hans von Schack. It was laid down that, as soon as the number of prisoners should exceed five thousand, a camp commandant should be appointed with the rank of the commander of a regiment, and that an adjutant and the necessary clerks should be allotted to him. Accordingly, as early as 4th October, 1914, Major-General (retired) Kruska was appointed Camp Commandant. He took over command on 5th October, 1914.

The first prisoners of war in the camp of Niederzwehren-Cassel were Frenchmen and Belgians. They arrived, at the end of September, 1914, to the number of about four hundred and fifty. They were followed on the 20th October, 1914, by nine hundred Russians. From that time on, the number of prisoners increased continually. At the beginning of 1915, they already amounted to

six thousand. Then suddenly, during January, great masses of Russian prisoners of war were added, till finally, in March, 1915, *the number of men quartered there reached eighteen thousand three hundred.*

The health conditions in the camp were at first not unfavourable. In a report to the acting Commanding General on 22nd January, they were even described as very good. Infectious diseases such as cholera and enteric, although often introduced by prisoners, had not spread up to that time. During the first few months only isolated cases of death occurred.

In the middle of February, 1915, *this was changed. Spotted fever broke out in the camp, brought in by Russian prisoners. The disease spread because these prisoners were sleeping with others. It was then almost unknown in Germany, so that the camp doctors were not able on its first appearance to diagnose it with certainty. In consequence, it quickly got the upper hand and spread like a plague over almost every part of the camp.*

Up to 9th March, 1915, *indeed, the cases were kept within more or less reasonable bounds, but from that time on the numbers rose day by day, and in April,* 1915, *attained a deplorable pitch. The number of cases per day fluctuated between fifty and two hundred; on 5th May,* 1915, *the day given*

as the highest point reached by the epidemic, the number amounted as high as three hundred and forty-nine. Altogether, of the eighteen thousand, (in round figures) prisoners of war, seven thousand two hundred and eighteen fell ill of spotted fever. One thousand two hundred and eighty of these died, among them seven hundred and nineteen Frenchmen. The numbers are taken from official statements. Only in about July, 1915, did the epidemic completely die down.

The charges made against the accused Generals were thus summarised by the Court:

The French Government holds the Camp Commandant, General Kruska, and his military superior, General von Schack, criminally responsible for the death of these prisoners. They charge them with having, by intentional neglect of the duties of their office, designedly furthered the spread of the typhus epidemic, and by so doing with having been the cause of the death of not fewer than three thousand prisoners of war.

The accusation made against them is one of murder. "All hygienic measures were intentionally suppressed by them." Further, "The evidence collected depicts them as tyrants, possessed of a savagery and cruelty which defy all comparison with the descriptions of the historians of the most remote ages of barbarism."

The two accused, General von Schack and

General Kruska, are reputed, according to this, to have designedly killed more than three thousand men and to have killed them deliberately.

The Court explained that:

The accusation is based on the depositions of a number of former French prisoners of war. Two of these, namely the primary school teacher Roulon of Marigné, and the insurance official, Paschali of Strassburg, gave evidence personally before the Court. The depositions of the others have been read.

The principal witness is Roulon. After his return from imprisonment he handed to the French Committee of Inquiry a detailed report in writing of what he had seen in the camp at Cassel, which report was published in the French press. The other witnesses at their examination by the French Judge associated themselves with him in the main. Roulon made no concealment of the fact that, in his opinion, Commandant Kruskà alone was guilty of the large number of deaths among the prisoners of war. He maintained that the Commandant did practically nothing to put down the epidemic.

It is said that such conduct must have been intentional because on Christmas Eve, 1914, *in an address to the prisoners General Kruska declared: "In order to wage war, he needed neither rifles nor guns, he waged war in his own way." Roulon, indeed, did not hear this statement himself, but he*

says that it was reported to him by comrades. This last is so far correct that the witnesses Langlais and Perroux do indeed state that they heard such a speech from the lips of Kruska on Christmas Eve, 1914. *It is moreover correct that the French witnesses did generally understand Kruska's remark "that he waged war in his own way," as if he had meant to say: "Out there at the front war is waged with rifles and cannon; here in the prisoners' camp he waged it in his own way, namely, by letting the enemy perish of disease."*

The Court utterly refused to believe Roulon. He was undoubtedly the leader of the French prisoners, but he did not impress the Court while he was giving evidence, and in its judgment the Court stated:

The evidence of Roulon must be taken with a certain degree of caution, as another witness, Superintendent Naumann, testifies that Roulon was well known to his camp comrades as given to making fantastic complaints. Naumann himself called him "cafard" (humbug).

With regard to this alleged Christmas speech, the Court found as follows:

If General Kruska did actually use an expression of this kind to the prisoners on Christmas Eve, it was not in any way meant as the witnesses now wish us to believe. The first cases which were definitely ascertained to be spotted fever occurred

on 19th February, 1915. It is, therefore, impossible that on the 24th December, 1914, the accused can have thought of the disease as a means of destruction to be employed in war against our enemies.

A still more weighty argument against the interpretation of the witness Roulon and his comrades is to be found in the personality of General Kruska himself. Kruska, as is well known, and as all who were associated with him in the work of the prisoners' camp testify, is of a deeply religious character and a convinced Christian. He allowed numerous tracts and evangelical books in the language of the prisoners to be distributed amongst them. That such a man should conceive the purpose of destroying his fellow men, by means of an epidemic, is out of the question, and it becomes all the more incredible that he should express such murderous ideas on the eve of Christmas.

As a matter of fact, a Christmas festival did take place in the prisoners' camp. The accused Kruska assembled the prisoners of war around a decorated fir tree and, in the presence of his officers, addressed to them in French and Russian some remarks on the significance of the day. Referring to the birth of Jesus Christ, he said, "Jesus Christ was not born alone for the Germans, and not alone for the Russians or French; rather has He brought salvation on earth to all mankind. The prisoners

may be assured that the Camp Commandant will do all he can to lighten their unhappy fate. His idea is not to treat them as enemies, but in the manner in which a Christian should treat his fellow men." The witness Ameln thus remembers the remarks of General Kruska. Ameln is a manager of the Berlitz School in Cassel, and served at the time as interpreter in the prisoners' camp. He cannot recollect whether Kruska made use of the expression that he would wage "war" in his own fashion. One thing is quite clear: the expression used in such a connection could not possibly bear the meaning that the prisoners gave it.

The following argument was then advanced by the Court:

The accused Kruska rightly points out that an action of this nature would have exposed his own countrymen, and himself as well, to the greatest danger. It is certainly quite clear that, if an epidemic of disease were to break out in the camp, it could not be confined to the prisoners alone, but would necessarily also attack the numerous Germans employed as guards, and also the doctors and officers. This is exactly what did take place. Out of the eighteen German doctors at the prison camp, all, with two exceptions, were attacked by spotted fever; four died of the disease. In addition, two of the German officers in the camp and thirty-

two sergeants and non-commissioned officers fell victims to the disease.

Dealing with the conduct of General Kruska, the Court found:

General Kruska in no way spared himself. He personally visited the prison camp by day and night, even when the epidemic was at its height, in order to see that all was right. Against all the warnings of the doctors, he went in and out of the disease-stricken hospital barracks, in order to bring confidence to the sick. In this connection the evidence of the witness Hartmann is characteristic. On one occasion, when he had pointed out the risk of infection to Kruska when the latter went with him on his round, the latter gave him to understand "Our life is in God's hand. We must do our duty." He accepted it as his duty personally to care for the welfare of the prisoners placed under his charge, even under the most severe conditions.

The Court then considered whether the accused Generals had been guilty of negligence in performing their duties at the camp. It decided that "in this connection both General von Schack and General Kruska are found completely free from blame."

The Court examined a number of complaints that had been made in the French statements, and decided that they were "without foundation on most points, or at least exaggerated." Further, the Court found that any defects which were proved

lay " outside the legal responsibility of the two accused."

The charge of negligence is also proved to be unjustified. This is not affected in any way if in the prolonged course of the epidemic irregularities did actually once occur in particular parts of the camp. It may be, as some of the French witnesses state, that all the sick could not be immediately taken into the overflowing hospitals, and that several of them were carried to the hospital on overturned table-tops which were later on used again for meals. This was forbidden, but was excusable at times when occasionally on one day, hundreds of prisoners fell ill and the available stretchers were insufficient to meet the demands.

The accused admits the incident described by Leroux in his evidence. Leroux states that dead and sick prisoners were left lying side by side for a time. This, however, proves nothing against the accused. General Kruska, owing to the vast extent of the camp, could not be everywhere. It was out of his power to prevent such neglect. In such neglect the medical staff were mainly to blame.

Several other complaints were examined, complaints which, in the words of the Court, " referred to other evil conditions in the prisoners' camp." These complaints have no connection with the charges which concerned the intentional killing of prisoners of war. The Court did not dispute that

minor causes of complaint may have existed, but decided that " a Camp Commandant cannot possibly be made responsible for all such trifles, especially when he knows nothing about them." These findings are significant illustrations of the difficulties which surround the indictment of senior officers, with whom the prisoners of war naturally came but little into contact.

As to the camp itself, the Court admitted that " whether it fulfilled all the conditions of strict hygiene remains doubtful," but held that " it was in no way damp or otherwise unhealthy." The food of the prisoners was held to have " fulfilled the legal requirements," and the Court found that " both General Kruska and the principal doctor examined and tasted it daily." Further the Court found:

If in one or two points the sanitation was actually defective, as complained of by the French witnesses, these defects cannot be regarded as the cause of the outbreak of the epidemic of spotted fever, because the carrier of the fever has been, according to the opinion of both professors, Dr Gärtner of Jena and Dr Damsch of Göttingen, ascertained to be the louse, and it is only by the louse that the disease is conveyed. The outbreak and spreading of the disease in the prisoners' camp could, therefore, only be influenced by defects which would assist in conveying the louse-plague to other prisoners.

The Court held that what "most contributed to the outbreak of the epidemic was the order of the Camp Commandant that the Russians were to be placed with the other prisoners." But in the opinion of the Court neither of the accused could be held responsible for this.

From the point of view of health, the most serious matter was the mixing of nationalities which took place in October and November, 1914. *The responsibility for this, however, rests exclusively with the High Command of the Army. An order for this was given by the War Office on* 18*th October,* 1914, *and this order stated that it was advisable to place the Russian prisoners with their Allies, the English and French. From the medical point of view, the doctor at the camp made representations against this. . . . The higher authorities obstinately insisted on their order, and the parties concerned had nothing else to do but to obey.*

The Court also admitted that there was at first a scarcity of doctors:

Neither General Kruska nor General von Schack failed constantly to insist that the competent medical authorities should increase the medical staff. Requests to that effect had already been made on 2nd October, 1914. *General Kruska, for his part, states that he applied almost every week. This had but little success. Owing to the enormous requirements of the army and ambulance service,*

it was only possible at the time to place a very limited number of German doctors at the disposal of the camps. Nevertheless, great improvements were made. Generally speaking, the state of health of the prisoners does not seem to have suffered very greatly while there was a shortage of doctors.

The French witnesses had suggested that it was only when French and Russian doctors were sent to the camp that the epidemic was seriously attacked. The Court found, on the contrary, that:

It is wrong for the French witnesses to think that it was mainly to the efforts of the French and Russian doctors that the stamping out of the disease was due. The struggle against the spotted fever epidemic had commenced long before they came. The French and Russian doctors, ordered by the assistant Commanding Officer to give their assistance, did not arrive at the camp until the middle of May, 1915, when the sanitary work of Dr Gärtner had already been practically completed.

It is a calumny when some of the French witnesses assert that the German doctors, because they feared the risk of infection, refused to give their services in the infected barracks, so that the sick men only received proper attention on the arrival of the Russian and French doctors. To refute this, it is sufficient to draw attention to the fact that, out of eighteen German doctors, sixteen sickened of spotted fever and four died. At the

instigation of those in command at the camp, foreign doctors were summoned to the camp for assistance in May, 1915; *about eighty came, and of these only two fell victims to the epidemic. The part played by these doctors in stemming the epidemic is over-estimated on the French side. In the main, they only treated the patients in the camp hospitals when they had been already cleansed from lice, which was comparatively without danger, whilst the cleansing from lice, the removal of the sick from the barracks, their isolation, and their transfer to the disinfection centres—much the most dangerous share of the work—was in the hands of the German doctors.*

Dealing with the charges against General von Schack, the Court described them as "groundless and frivolous," and pointed out that:

The prison camp of Niederzwehren-Cassel was on 15th January, 1915, *separated from the jurisdiction of General von Schack, and was placed under a newly appointed inspector of prison camps. On that day the supervision of General von Schack over the camp ceased, and with this also his legal responsibility for anything that later on took place there. The outbreak of the epidemic of spotted fever occurred first in the middle of February*, 1915, *that is to say fully four weeks later.*

As to General Kruska the Court found that he "was unremitting in his endeavours to arrest the ravages of the disease. The accusation that he

wantonly took no active steps against the disease in order to let the prisoners die is absolutely without any support whatever and is fully refuted." The Court then proceeded to give General Kruska a strong testimonial for his work in the camp.

From the first news of the disease, Kruska—General von Schack at once drops out of this question—did all that human power could do to arrest the spreading of the disease. All the witnesses who were on duty in the camp are unanimous in praising him.

The contrary opinion of the French prisoners, who reproach the accused with slackness, can have no importance against this. They were not near enough to the administration of the camp to form a fair conception of the position. They only infer from the actual course of the disease and from the fact that conditions did not substantially improve until Kruska was relieved of his post (6*th May*, 1915), *that nothing serious was done by Kruska to bring about an improvement.*

As a matter of fact General Kruska, as soon as the nature of the disease was ascertained, at once took every step for prevention, which the chief doctor of the camp declared necessary according to what he then knew about spotted fever.

This latter point is of considerable importance. The Court emphasised the fact that the disease was then practically unknown in Germany.

The means adopted were indeed insufficient, but they agreed with our scientific knowledge at the time. The camp doctors, on whose expert knowledge the accused was dependent, had not seen a person suffering from spotted fever before. The disease was practically unknown to us before the war. . . . As soon as the facts about the disease were made clear, the disease was attacked with formidable energy. Advice was sought from a well-known scientific authority, Dr Gärtner, Professor of Hygiene at the University of Jena, and he was given a free hand to do what he thought was necessary. Dr Gärtner came for the first time to the prisoners' camp on 14*th April,* 1915, *and from that time he waged war against the cause of the disease. At his request, and at a colossal expense and with the greatest speed imaginable, forty new and large disinfecting apparatus were set to work, and the number of men daily freed from lice rose to two thousand. His incessant efforts were finally crowned with success. At the beginning of July the camp was free from disease.*

The Camp Commandant, General Kruska, and the German doctors are entitled to a large share in this happy result. This was recognised by Dr Gärtner at the time. In his official report to the Inspector of Prisoners' Camps at Cassel, dated 26*th April,* 1915, *he says that he "carried away the conviction that the disease had been fought with*

every possible energy in the camp," and he mentions gratefully that in particular the Camp Commandant, General Kruska, had assisted him in his efforts in the most energetic manner. . . . In his sworn evidence as a witness, Dr Gärtner has not hesitated to repeat the praise he there expressed. He is convinced that General Kruska has nothing to reproach himself with. . . . The camp doctors who worked with General Kruska till his departure on 6th May, 1915, have associated themselves unreservedly with this opinion.

The Court reported further that " a Camp Commandant must consider himself the father of the prisoners of war. The accused, General Kruska, as the trial has revealed, came very near to realising this ideal. He certainly appears in a very different light from that in which the French Government has presented him."

Summing up the position, the Court found that " General Kruska, as well as General von Schack, is, as the State Attorney has himself said, to be acquitted absolutely. That the fatal epidemic broke out during his command was a misfortune which could not be averted, even by the most strenuous fulfilment of duty." The final verdict of the Court accordingly was that " the trial before this Court has not revealed even the shadow of proof for these monstrous accusations."

CHAPTER VI: COMMENTS

Those who have read the accounts of the trials which are set out in the last three chapters will be struck by the fact that, whereas in every British case in which facts were in dispute, a conviction was recorded, this was far from being the case in the Belgian and French trials. The results of the trials can be tabulated thus:

	English	Belgian	French
Prosecutions . . .	6	1	5
Convictions . . .	5	0	1

It would not be possible, and it would certainly be inexpedient, to explain why the British evidence was accepted by the Court as a general rule, whereas so much of the evidence in the Belgian and French trials was rejected. It is obvious from a reading of the judgments in the Belgian and French trials that, as a whole, the Belgian and French evidence did not impress the Court as being impartial and credible. Into the question whether this was so or not I cannot enter. It seems natural that Belgian and French witnesses would show more feeling and hostility than British witnesses. Their national temperament is different from ours,

and their country and their homes had suffered far more than ours had done. If they showed hatred, we can well understand it, but whether their evidence as a whole did show such bias as to be unworthy of acceptance is a question which no Englishman would like to answer, unless he had been present at the trials.

In this book I would restrict my comments as far as possible to the British evidence, for I had ample opportunity of judging our witnesses. There is no doubt whatever that the principal reason why convictions were obtained in the British cases was that the British witnesses, however great their sufferings had been in the past, showed no signs of malice or bias when giving their evidence.

There was only one exception. In the trial of Captain Müller one British witness told an appalling story of how Müller had been present at the burial of a British soldier. The witness described how he had seen Müller dismount from his horse, jump down into the open grave, snatch away from the dead man the rug in which he was wrapped and say: "The English can be buried naked." It was proved to the satisfaction of the Court that the only funeral which took place while Müller was at the camp was on the day on which he left, that this funeral was conducted in an orderly and respectful manner, and that Müller was not present. Personally I was convinced that the Court decided rightly

about this; the explanation may be that the witness had mistaken Müller for some other German officer. The Court reported in its judgment that " the witness has not impressed the Court as a credible witness. He has shown animosity; he has exaggerated everything far beyond the accounts of the other witnesses; he has told of monstrous happenings."

This was the only case in which the Court definitely found that a British witness was not telling the truth. On the other hand, many testimonials were given to other British witnesses. The testimonial given by the Court to Mr Chapman, the second officer on the *Llandovery Castle*, to the effect that he " impressed the Court as a quiet, clear-headed and reliable witness," was only one of many testimonials given by the Presiding Judge during the trials.

Even on their journey to Leipzig it was clear that the British witnesses were going to Germany without any thought of securing revenge. I recall an incident at Hanover which, to my mind, typified their attitude. We were travelling in reserved compartments, but a pompous and prosperous-looking German entered the corridor, apparently not observing the label " Bestellt " (Reserved) which was on the windows of our carriages. As he passed the carriages in which the witnesses were travelling, I heard a cheery British voice cry out, " 'Ullo, Fritz, come in 'ere." Had the dignity of the

intruder permitted him to accept the invitation, I have no doubt that he would have had a good-natured welcome.

Every one of these witnesses had suffered horribly at the hands of Germans, but it is not in us British people to bear malice for long. These splendid men set an example to the whole nation in their ability to get free from any idea of revenge. The British witnesses were loyal patriots, but they did not think that patriotism demanded of them that they should either hate all Germans or go beyond the truth when recounting individual brutalities. During the prison camp trials, our men heard that in the cemetery at Leipzig there were several graves of British soldiers who had died at a hospital in the town. Entirely of their own free-will, they organised a touching ceremony, at which all the British Mission took part, and laid wreaths upon the graves of their comrades. These graves, let it be fairly said, were beautifully cared for, and I remember one of the witnesses coming up to me and saying: "It does one good to see how the Germans care for these graves." That is the true post-war spirit. That man was an example to many at home, especially to those who hate *en masse* without ever having experienced brutality themselves.

In Chapter I, I have said that it will never be possible to understand the War Criminals' trials

unless it is realised that they were regarded as judicial trials, and not as the automatic registration of verdicts. When the trials were first mooted, an ignorant public no doubt had visions of drum-head courts-martial which would register its war-time hatred against all those guilty of atrocities. Even in 1921 it probably seemed a mistake to many Englishmen to allow Germans who were accused of atrocities to be judged according to the ordinary methods of criminal justice. Certainly those who wanted the British Mission to bring back from Germany chargers laden with German heads must have thought thus, if they thought at all. But the fact is, and history will pay due attention to it, that the British Mission went to Leipzig in the full knowledge that the accused had to be proved guilty before they could be punished.

The British witnesses had not been coached in any way before they gave their evidence. On arrival at Leipzig, they were addressed by Sir Ernest Pollock, who gave them an explanation of why the trials were being held there and merely warned them not to say in their evidence more than they really knew of their own knowledge. These men were a heterogeneous collection of British manhood of all classes and from all parts. They were plain, blunt men, typical of our race.

Over and over again British witnesses went out of their way to tell of some redeeming incident; over

and over again they refused to bind themselves definitely to the assertion that it was the accused who had done this or that. Thus, Major Lyon, the doctor who gave evidence in the *Llandovery Castle* trial, told of how he was ordered out of his life-boat on to the submarine, as the commander wanted to interrogate him. It is not easy, I should imagine, to climb on to a submarine in mid-ocean. The witness told how, while he was clambering up, a young officer took hold of his arm and flung him down on the deck, breaking his leg. The Presiding Judge asked whether the witness could identify the officer who did this. It was obviously Boldt, but the witness hesitated and would not speak definitely. I heard the President say quietly to the next judge, "You see, this man will not say more than he knows." It was because this was the spirit in which the British evidence was given that the Court believed the British case.

To believe that the German Court was throughout endeavouring to be fair and impartial is not by any means to say that in all respects the findings of the Court were satisfactory. It is very easy to pick holes in the judgments of the Court, and, as I will show in the next chapter, any lawyer must feel disappointment at the legal value of the trials.

No Englishman can read the judgments in the Müller or Dithmar-Boldt cases without feeling some indignation at the view taken by the Court. But

first of all it is essential to remember that the Court was composed of German judges, who viewed the events with a German mentality. Any German, be he a judge or layman, takes a far more serious view of disobedience to orders than an Englishman does. In the next chapter the military codes of England, France, and Germany on this subject will be quoted. The differences between them are very substantial; at bottom they are psychological. Full allowance must be made for these differences of national mentality when we criticise the findings and decisions of the Leipzig Court.

In all the prison camp cases counter-accusations of disobedience, and even of mutiny, were made by the accused or by the military expert. It must be admitted that in the cases of Sergeant Heynen and Private Neumann the British prisoners had been a very difficult lot of men to rule. Being British, they were men of spirit, unaccustomed to the Prussian idea of blind obedience in whatever circumstances. As I have said in Chapter III, Heynen and Neumann were utterly unfit to have command of British soldiers, who no doubt treated them as we all used to treat an unpopular and undignified master at school. The stories told in Chapter III show that, on several occasions, the British prisoners had refused to obey the orders of the prison camp commanders, and that defending counsel and General von Fransecky made great play with any truculence

that the British prisoners had shown. Anyone with a British mentality will be filled with admiration for the sturdy and plucky resistance which our prisoners showed. But such conduct appears in a very different light to German eyes, and even Dr Schmidt, fair and humane though I am convinced he was, would instinctively make far more allowances for brutality in retaliation for such indiscipline than would any British judge.

So in the submarine cases, where obedience to orders on the part of the accused officers was in question, the whole spirit, as well as the letter, of British military law on this subject is different from the German. An Englishman feels angry, for instance, when he reads that the Court refused even to decide whether Dithmar and Boldt were guilty of having taken part in the torpedoing of the *Llandovery Castle*. The whole of the judgment in the Captain Neumann case seems to an Englishman to evade the crucial point, namely, whether Neumann was justified in obeying his orders. But here again we have to remember the German mentality and its reverence for instructions from higher authority. I always think that it is significant that there are notices in many German railway carriages that "in case of dispute as to whether the window shall be open or closed, the guard will decide." Germans have a respect for authority which we British people can scarcely understand.

The British are law-abiding by nature, but the Germans are, even now, slaves of a bureaucratic hierarchy. We cannot adequately weigh the German judgments unless we realise these differences in national temperament.

Of the Heynen and the Robert Neumann trials nothing further need be said. The accused men were insignificant. If, as I believe, they received less than their deserts, they are as individuals not worthy of further thought. But the Müller case was different. I cannot accept the view of the State Attorney that " most of the charges in Müller's case evaporated " at the trial. It seems to me that the brutalities of which the Court found Müller guilty were sufficient to make a *prima facie* case for his guilt on many other charges which the evidence of the British witnesses, uncorroborated though it was in many instances, should have converted into proof. These brutalities seem quite inconsistent with the assertion of the Court that he " faithfully tried to do his duty." Müller undoubtedly received less than his deserts. But at the same time it must be admitted that the British witnesses did undoubtedly hold Müller responsible for many things which it was beyond his power to remedy. Listening to this trial, I longed for a few of the German Generals to be tried who had insisted upon housing our unfortunate prisoners in this awful camp with the object of securing their labour for illegal work. But where

was the evidence on which to prove their guilt? The law of the swing of the pendulum operates in all men, in law courts as everywhere else, and, if charges are placed too high, there is likely to be a reaction in favour of the accused man. This undoubtedly happened in the Müller trial.

But British criticism will be mainly concerned with the submarine trials. As will be shown in the next chapter, the Court in these trials evaded many of the big legal issues to which these submarine attacks gave rise. In both these trials the accused were acquitted for having torpedoed a hospital ship; in the Dithmar-Boldt trial the accused officers were only punished for the atrocities committed after the *Llandovery Castle* had sunk. This is not satisfactory. But in the fluid state in which International Law was in 1921, it could scarcely be expected that a German Court would define for the first time principles which, however generally accepted as maxims of morality, had never hitherto been regarded as laws, the breaches of which involved penalties.

The main question in regard to the submarine trials that we need to consider here is whether the Court rightly found a verdict of manslaughter, and not of murder, in the *Llandovery Castle* case. The difference between murder and manslaughter is often very difficult to recognise. To amount to murder in the eyes of British law, the killing must be

with "malice aforethought," a term whose interpretation often causes difficulty. Lord Coke defined murder thus: "where a person of sound memory and discretion unlawfully killeth any reasonable being with malice aforethought, express or implied." Manslaughter, according to British law, is an unlawful and felonous killing of another without any malice, express or implied. The German Court based its decision upon the question of "deliberation"; the submarine officers intended to kill, but the killing took place, the Court decided, only a short time after the intention was formed, and before the officers had adequately realised the nature of their act. Such a plea would have little prospect in a British murder trial, for the accused men knew what they were doing, though, of course, they may not have realised at the time either its moral iniquity or its inevitable consequences. Section 211 of Germany's State Criminal Code lays down that "anyone who wilfully slays a human being shall be punished with death for murder if he acted with deliberation." These last words do seem to give the Court the opportunity which in the Dithmar-Boldt case it took. Section 212 says that "anyone who wilfully slays a human being shall be punished for manslaughter, if he did not act with deliberation." The whole question depends upon the interpretation of the word "deliberation." To say that an act shall only be punished if done "with deliberation"

may mean anything from "if the doer knows what he is doing" to "after consultation with his legal advisers and the formation of a final opinion." In the judgment of the Court itself, as has been pointed out in Chapter IV, there is an indication that the decision to destroy the people in the life-boats was made earlier than was actually found by the Court to have been the case. But even if this decision was formed an hour or so before the firing was begun, these words "with deliberation" might still be construed as covering the accused officers. "Deliberation" is a vague term, unsatisfactory as a legal test; but this is the test that has long been adopted by German law. It does, therefore, seem that the decision of the Court that Dithmar and Boldt were guilty of manslaughter, and not of murder, can be upheld according to German law, and this was the standard adopted by the Court.

But the question which aroused the greatest criticism at the time of the trials was the short length of the sentences imposed. I say frankly that in all these cases, especially in that of Müller, the sentences imposed were very lenient. But certain fundamental factors have to be considered. In the first place the Court by no means accepted all the charges as proved, and there is little doubt that in many instances, where a single British witness was not corroborated, a British Court would probably also have given the benefit of the doubt to the

accused. Secondly, it is necessary to realise what a sentence of imprisonment passed on a German soldier or sailor meant in Germany. German soldiers and sailors, especially officers, had long been privileged mortals in Germany. Anyone who has lived in a German garrison town before the war will know that this was so. Both socially and in the eyes of the law, men in the services were a caste apart from the rest of the community. Six months' imprisonment in a civil jail thus meant far more than three years' detention in a fortress, which is a usual military punishment. The Germans always have had strange ideas about service "honour," and this "honour" was deeply wounded by a sentence of imprisonment, such as mere civilians received.

Germany has always accepted what to an Englishman seem strange ideas of "honour" generally. In Germany there is a whole law of insults. It begins (Section 95 of the Criminal Code) thus: "Anyone who insults the sovereign of his own State . . . shall be punished by imprisonment. . . ." Then follow varying punishments for insults to lesser potentates, and finally in Section 185 it is provided that "insult (of anybody) will be punished by a fine up to six hundred marks or by imprisonment." But the word "insult" does not even appear in the index to the British criminal text-book that is most in use.

We British have, on this subject, precisely

opposite ideas to those of Germany. In our civil law of libel, if a defendant can satisfy a jury that the words for which he is being sued were merely understood as words of vulgar abuse and not as imputing a criminal offence, the plaintiff will fail unless he can prove special damage. Thus in the famous case of Thompson *v.* Bernard, decided in 1807, the plaintiff sued because the defendant had said the following about him: "Thompson is a damned thief and so was his father before him. Thompson received the earnings of the ship and ought to pay the wages." Lord Ellenborough decided that this was merely abuse, and consequently he would not even hear the action. If the defendant had called the plaintiff a "Pig-Dog," the case would have been laughed out of Court. In another well-known case the words used were: "You are a thief, a rogue and a swindler." This was technically slander, but the Court showed its sense of the gravity of the offence by awarding the plaintiff one farthing damages. Had the defendant used the less ambitious term of "bankrupt," or had he said that the plaintiff was retiring from business, far more awkward consequences might have followed. Our law seeks to redress real grievances, not paltry insults to an inflated and false sense of "honour." Similarly, in British Criminal Courts insults are only punished when substantial damage has actually accrued, or where a breach of the peace has been

threatened. "De minimis non curat lex"; mere vulgar abuse is considered to be beneath the dignity of the Courts; and so it is. But not so in Germany.

In all the prison camp cases the Court went closely into the allegations of the prisoners that the commandants had called them names. These allegations formed a very minor part of the complaints originally made, but the German State Attorney made out of them separate charges in the indictments. The Court took a very serious view of these offences. In the Heynen case it stated in its judgment:

The accused, according to Parry's statement, which is considered to be credible, got angry and so irritable that he called him "Englischer Schweinhund" ("*English Pig-Dog*"). *He thus insulted this prisoner who, by being placed under his command, had become his subordinate.*

Müller was found to have employed the same very German term; he also called his prisoners "Dreckschwein" ("Mire Pig"), and the Court found that "these were serious personal insults, and were wounding to national feeling." Private Neumann too was found guilty of using the word "Schweinhund." All this seems to an Englishman very puerile and unimportant, but they mean a good deal in Germany.

In its judgments the Court showed that it also had ideas about honour which seem quite unintellig-

ible to an Englishman. Thus it pointed out several times, when convicting the accused of horrible brutalities, that their " honour " remained untouched. In Müller's case the Court said in its judgment: " It must be emphasised that the accused has not acted dishonourably, that is to say, his honour, both as a citizen and as an officer, remains untarnished." Yet the Court went on to explain that it must order imprisonment rather than detention in a fortress, because " There has been an accumulation of offences which show an almost habitually harsh and contemptuous, and even a frankly brutal, treatment of prisoners entrusted to his care. His conduct has sometimes been unworthy of a human being." Within a few lines come these words: " When he mixed with the prisoners there was seldom anything but angry words, attempts to ride them down, blows and efforts to push them out of the way; he never listened patiently to their complaints; he had no eyes for their obvious sufferings," and finally, the Court found that Müller had made " a deliberate practice of domineering disregard for other men's feelings." Yet his " honour remains untarnished." Only to those who know Germany well is this at all intelligible. An Englishman will at once ask what the honour of a man could be worth whose conduct had been " unworthy of a human being." This can only be understood if we understand German psychology.

It must be remembered that it is the pride of British law that we have but one law that applies to all. The servants of the State, military or civil, are subject to the same law as private individuals. The soldier is the citizen in khaki. Men in the services are governed by special codes in respect of purely service offences, but they come under the ordinary law and procedure when they commit civil offences. It would be merely foolish for a counsel defending a British officer or soldier in a Civil Court to ask the Court to order detention in a fortress rather than imprisonment. But the whole spirit of German law is different from the British on this question. Section 10 of the German Criminal Code states that " the general criminal laws of the Empire shall apply to men in military service in so far as military laws do not provide otherwise." In other words, military laws have the first claim upon a delinquent German soldier. A German soldier would always prefer a military to a civil punishment. To be confined in a fortress or to undergo any military punishment is more " honourable " than to share the fate of the swindling company promoter or common pick-pocket. This being so, the very fact of a sentence of ordinary imprisonment being passed by a Civil Court upon a German soldier, especially for an act done while on military duty, was a severe punishment and a lesson to the German public, quite apart from the duration of the sentence.

It is impossible to appraise the sentences passed by the Leipzig Court unless these facts are borne in mind. If these facts are realised, it can be imagined how deep an impression was created by the sentences in Germany. British public opinion considered them trivial, but Germany thought them monstrous.

It is possible to bring many criticisms against the judgments of the Court; in Chapter VII I shall endeavour to point out their legal inadequacy. But none the less the fact remains that these trials were neither "a travesty of justice" nor "a farce." There was throughout a genuine desire to get to the bottom of the facts and to arrive at the truth. This and the fact that a German Court severely condemned the doctrines of brutality, which General von Fransecky and Admiral von Trotha applauded, are the important results that will live in history long after the miserable offenders have been forgotten.

CHAPTER VII: THE RESULTS ACHIEVED

When we come to judge the Leipzig War Criminals' Trials as a whole and to consider what they achieved, it is necessary to consider the legal results separately from what may be termed the political or ethical results. A whole book could be written upon the legal questions raised by the trials, but in this book I am writing for the general public rather than for lawyers specially, so it will not be possible to do more than survey briefly these big legal problems. I greatly hope that some fellow-lawyer will deal with these trials from the purely legal standpoint, for such a work will be of real value in the future. But in self-defence I am anxious to make it clear that I am not attempting here to cover the ground adequately from the point of view of jurisprudence. I hope, however, that this book will provide material which will be useful if a full legal commentary comes to be written.

There is no doubt that the trials held in Leipzig were of far greater value from the point of view of international politics and morality than they were

from the standpoint of jurisprudence. Nearly all the big legal problems were in effect side-tracked, but none the less the trials will, I think, be regarded by history as an important landmark in international relations and a valuable demonstration of the power of abstract rules of humanity. When the time comes to build up a wider and more complete code of International Law than exists at present, and to interpret these rules of humanity into definite laws, it will probably be found that the War Criminals' Trials have given material assistance.

1. THE LEGAL RESULTS.

As soon as the question of trying War Criminals came to be tackled by lawyers, it at once became obvious that very serious difficulties would have to be surmounted before any such trials could take place. The public, naturally, thought merely of a solemn procession of condemned soldiers, sailors, and airmen. Where ignorance is bliss, it is, perhaps, folly to be wise. Had the practical difficulties in the way of these trials been at all realised, the public enthusiasm for them might well have been considerably less. Happily, some time before the end of the war these difficulties were considered by the authorities, with the assistance of many eminent lawyers.

The first and obvious difficulty lay in the question of the system of law by which the War Criminals were to be tried. Some of the crimes were committed on the High Seas, others within British territorial waters; some again, as in the case of air-raids, were committed on or above our own country, while others took place in enemy countries (crimes in prison camps, for instance), and others in the territory of the Allies. Each country has its own military and civil penal codes and an act may, for instance, be a crime according to German law and not be a crime in the eyes of British law or vice versa.

As soon, therefore, as the problem passed into the hands of lawyers, serious practical difficulties arose. There was no defined body of law to which the War Criminals could be made amenable, and among the Allies there was no uniform criminal procedure.

This latter difficulty was in part surmounted by the provision in the Treaty of Versailles (quoted in full in Chapter I) that " persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power." But this article in the Treaty did not cover all the cases, so it was necessary to add that " persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought

before military tribunals composed of members of the military tribunals of the Powers concerned." Had this latter article ever been brought into operation, difficulties of procedure would inevitably have arisen, as French or Belgian criminal procedure is very different from our own. Not only has each country its own law, but each country has its own legal procedure. Thus a Frenchman would find the procedure in the Courts at Leipzig less strange to him than the proceedings at the Old Bailey. Those who know something of our own Courts and have read the accounts, given in earlier chapters, of the proceedings at Leipzig will be able to imagine how difficult it would have been to constitute a Criminal Court composed of both British and continental judges; the German procedure is not greatly different from the Belgian or French.

These practical problems of procedure were avoided by the conditional acceptance by the Allies of the German offer that the War Criminals should be tried in Germany before a German Court. But still the problem of the law by which they should be tried remained.

The ordinary criminal law of our country did not provide for trials of enemies for acts committed abroad. Had the War Criminals been tried in the ordinary way at the Old Bailey, they would in all probability have successfully pleaded an absence of

jurisdiction in the Court. Similarly our military law was inadequate to meet the occasion. If there had then existed any defined and complete code of International Law, or of what are rather vaguely described as "the laws and usages of war," these difficulties would not have arisen. But no such codes existed.

A well-known legal writer says that "International Law may be regarded as a living organism which grows with the growth of experience and is shaped in the last resort by the ideas and aspirations current among civilised mankind." Unfortunately experience comes first and International Law grows later, because of the experience. Before the Great War there was no International Court of Justice, and International Law could scarcely be called an exact science. In the judgment of the Leipzig Court, in the cases of Dithmar and Boldt, the Court referred to "the ambiguity of many of the rules of International Law." This ambiguity was very real at the time of the War Criminals' Trials. Lord Birkenhead has defined International Law as "the rules acknowledged by the general body of civilised independent States to be binding upon them in their mutual relations," but States acknowledge rules of conduct long before they agree to recognise machinery for punishing those who break them. The Hague Conventions had not provided for punishment where "the laws and usages of war"

had been broken and, even so far as these Conventions were definite, doubts were thrown upon their validity during the War Trials on the ground that some nations had not formally ratified them before the Great War broke out.

It is true that the greater part of British law has been built up by a long series of decisions for which there was at the time no actual precedent. The well-known words which Tennyson used of Freedom apply to the growth of our law:

> "Where Freedom slowly broadens down
> From precedent to precedent."

British Equity, that supplementary system of law which modified and refined our Common Law, and which is now incorporated with it as part of the law of the land, grew by a series of judicial decisions. To quote a famous Master of the Rolls, "The rules of Courts of Equity have been established from time to time, altered, improved, and refined. In many cases we know the names of the chancellors who invented them. No doubt they were invented for the purpose of securing the better administration of justice, but still they were invented."[1] Lord Chancellors, however, had at least their defined authority, which all the King's subjects were bound to respect. Besides, it is one thing to decide civil rights by defining abstract principles that have

[1] Jessel, M.R., in the case of In re Hallett's Estate, 13 Ch.D., at p. 710.

hitherto never been recognised as law and quite another matter to punish men by embodying moral principles into laws for the first time.

In considering the problem of trying the War Criminals there were no real precedents, there was no Court, and there was no generally recognised code of law. The problem, it is true, was not an entirely new one. In 1865, after the American Civil War, an officer of the Confederate Army was arrested, tried before a Military Court at Washington, sentenced and executed. But it is necessary to remember that Americans of the North and South were both Americans, so there was then no question of divergent laws and loyalties. After the South African War, certain Boers were specifically excluded from the amnesty clause in the Peace Treaty, and one Boer officer at least was tried by a Military Court and sentenced. But the Treaty of Vereeniging had brought the Boers under British rule, so in this case also there was no satisfactory precedent for the problem of the German War Criminals. " No wrong without a remedy " will be the motto of a legal Utopia, but it is obvious that in 1914-18 there were many wrongs for which no generally acknowledged remedy then existed. This was the problem which confronted the lawyers who were appointed to handle the question of trying the War Criminals.

The British authorities went fully into all these

and kindred problems. Reports of the greatest legal interest were drawn up, but unfortunately they are, at the time of writing, still secret State documents. But the intentions of the authorities and the Allies can be seen in the actual terms of the Peace Treaty. The German nation was compelled to recognise by Article 228 " the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war." But it was not laid down in the Treaty what code of law should be applied in the trials. It seems clear that it was intended that the War Criminals should be tried according to abstract theories about the usages of civilised peoples and the dictates of the public conscience rather than by any then existing code. In other words, generally recognised theories of conduct were to be the standard, although these theories had never hitherto been embodied into legal form. In the previous article of the Treaty (No. 227) the Allies " publicly arraign William II. of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties," and it was laid down that, " In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn obligations of international undertakings and the validity of international morality." There was then no definite law embodying " international

morality " or " the sanctity of treaties " ; the " highest motives of international policy " had never been reduced to the form of law.

Had the trial of William II. taken place, it would have been a notable precedent, and out of precedents most of our existing law has, as I have said, been derived. So with the War Criminals. John Bright once said that the moral law was not written for men alone in their individual character, but it was written as well for nations. It was the intention of the Treaty of Versailles to make a great advance in applying to nations the moral code of individuals. Had it been possible to carry out the original intentions, legal science might have made a big advance. Whether it would have been found in practice possible for this advance to be made is a political question whose answer has no place in this book. All that can be said here is that for a real advance to be made in International Law, and for a further step to be taken in embodying moral principles into recognised law, a really judicial atmosphere is essential, an atmosphere that is free from national hatreds or war passions. A desire for revenge is always the enemy of justice.

The statesmen and lawyers who prepared the way for the trials of the War Criminals thus raised great expectations. When, however, having read the judgments of the Leipzig Court, we ask ourselves to what extent the trials have either settled the many

problems raised or have advanced the science of International Law, it is impossible to come to any other conclusion than that these trials have, from the purely legal point of view, done very little. Considering the long labours of the lawyers before the trials and the actual legal results, it seems, from the purely legal standpoint, almost a case of "Parturiunt montes, evenit ridiculus mus." To say this, however, is not to say that the Leipzig Trials were in any way valueless, for, as I will show later, really valuable results accrued.

A reading of the judgments delivered by the German Supreme Court at Leipzig shows that the Court was throughout administering German law. There are occasional references to the Laws of Nations, and during the trials the Laws of Humanity were occasionally mentioned. But all the prosecutions were in fact decided according to German law. This is shown specially clearly in the decisions of the Court upon the difficult question of the extent to which subordinates in war-time can plead superior orders as a defence.

This is one of the most difficult and important of legal problems connected with war. Upon it British military law differs very greatly from that of either our war-time Allies or enemies. The British Manual of Military Law prescribes that (Chapter III, Paragraph 11) "so long as the orders of the superior are not obviously and decidedly in opposition to the

law of the land or to the well-known and established customs of the army, so long must they meet prompt, immediate and unhesitating obedience." This is somewhat vague, and leaves considerable discretion to the recipient of orders. The Manual admits later (Chapter VIII, Paragraph 95) that "how far a subordinate could plead the specific commands of a superior officer—such commands being not obviously improper or contrary to law—as justifying an injury inflicted on a citizen, is somewhat doubtful." In practice the difficulties are not very real, for we British people have a happy knack of securing justice on individual facts, even when legal theories are in doubt. But there can be no doubt that British subordinates are not compelled to obey orders which are breaches of "the law of the land" or of "the well-known and established customs of the army."

But British law goes a good deal further, and not only gives a very real discretion to a subordinate, but actually provides that, under certain circumstances, he can be punished for not disobeying orders. Thus in Field Service Regulations (Part I, Section 13) it is provided that "unexpected local circumstances may render the precise execution of the orders given to a subordinate unsuitable or impracticable. . . . A departure from either the spirit or the letter of an order is justified if the subordinate . . . bases his decision on some fact

which could not be known to the officer who issued the order, and if he is conscientiously satisfied that he is acting as his superior, if present, would order him to act." Then follow these remarkable words: "If a subordinate, in the absence of a superior, neglects to depart from the letter of his orders when such departure is clearly demanded by circumstances, and failure ensues, he will be held responsible for such failure." During the Great War the British subaltern was the envy of the world; he taught the German army a good many lessons. The spirit embodied in these regulations was probably one of the reasons.

French military law contents itself with asserting the duty of obedience, and no exceptions are made in the French code; it is not even provided that subordinates in the army need not obey orders which are clearly illegal. The German code stands between the British and French in this respect. Section 47 (1) of the German Military Penal Code lays down that if the execution of an order results in the commission of a crime the subordinate who carries out the order of his superior may be punished if (1) he has gone beyond the order given to him, or (2) he knew that the order related to an act which involved a civil or military crime. This was the law which the German Court mainly considered.

When the German Court came face to face with this question, it arrived at its decision purely on

German law. Thus Captain Neumann, in the *Dover Castle* case, was acquitted solely because he was held not to have offended against Section 47 of the German Military Code. In other cases, especially in those of Max Ramdohr and Private Neumann, this question was also discussed and again the accused was acquitted on the particular charges, because it was held that there had been no offence against this section of the German code. In the trial of Lieutenants Dithmar and Boldt, the accused were exonerated for this same reason from responsibility for having taken part in the sinking of the hospital ship *Llandovery Castle*, but when the Court came to consider the responsibility for destroying the unhappy refugees in the life-boats, it held that no order that Commander Patzig may have given could, under the code, exonerate the accused subordinate officers.

There are other vital legal questions which were involved in the War Criminals' Trials, and which were not settled. In the Ramdohr trial the Court assumed the legality of the orders issued to the accused as an officer of the Secret Military Police, an assumption which, having regard to the operations of that organisation and to the well-known methods of the German armies in Belgium, is not likely to be accepted as final hereafter. Again, during the war Germany tore up most of what had hitherto been regarded as the laws of sea warfare.

In 1917, for instance, the German Admiralty ordered the sinking of hospital ships. The legality of this order was in question in the trial of Captain Neumann, but the Court assumed, rather than investigated, the legality. The Court never discussed the question whether a belligerent power can legally restrict the sea-routes which hospital ships shall follow. This is what the German Admiralty endeavoured to do by its Memoranda of January and March, 1917. Again, during this trial defending counsel urged that hospital ships can, according to International Law, only be used for sea warfare, and that to transport wounded soldiers on them brought them within Article 7 of the Geneva Convention of 1906 which lays down that "the protection which is due to medical organisations and establishments ceases if they are used to commit acts which injure the enemy." Defending counsel argued that the fact that British wounded could be evacuated assisted the British campaign and that, therefore, Germany and her allies were injured. This plea raised a most serious point, but the German Supreme Court did not definitely decide it. By inference from its judgments in both hospital ship cases it is clear that this plea was not accepted, but the point was not specifically settled.

Experience in the Great War has, it is true, afforded little encouragement for attempts to regulate the conduct of war. Many of the funda-

mental regulations that had been drawn up before the war were ignored during the war. Thus in 1899 the First Hague Peace Conference adopted a declaration that belligerents should abstain from the use of projectiles, the sole object of which was the diffusion of asphyxiating or deleterious gases. Germany later acceded to this declaration. The first of the prohibitions in Article 23 of Convention IV of the Second Peace Conference (1907) was "the use of poison or of poisoned weapons." Again, Convention IX of this second Conference laid down that "the bombardment by naval forces of undefended ports, towns, villages, dwellings, or other buildings is prohibited." Memories of Ypres and of Hartlepool do not conduce to optimism as to the value of such attempts to regulate warfare. But, none the less, such attempts will probably continue to be made, and the points upon which I have touched—I have by no means dealt with all of them —may some day be decided. If it had been possible to carry out the intentions embodied in the Treaty of Versailles, there might have resulted decisions of real value in building up both International Law and the Laws of War. On the other hand, we may reasonably doubt whether such problems can be settled by any national court. It certainly could scarcely be expected that the Court at Leipzig would lay down principles on these points which could be generally accepted. If these

problems are to be settled, they are essentially suited for the consideration of the League of Nations and of the new Permanent Court of International Justice. The Leipzig experiment has not been valueless, even from the legal point of view, but, nevertheless, the problem of punishing crimes committed either in beginning or in conducting wars has yet to be solved.

2. GENERAL RESULTS.

Disappointing as the War Criminals' Trials may well be from the purely legal point of view, there can be little doubt of their value from other standpoints.

A cynic may say that in any war of the future men are not likely to be restrained by the possibility of being tried after the war since, out of the many hundreds of Germans accused, only a few were brought to justice. Certainly the number of convictions in the Leipzig War Trials was a very small fraction of the number of men originally accused. But great principles are often established by minor events. The Leipzig Trials undoubtedly established the principle that individual atrocities committed during a war may be punished when the war is over. I have quoted the statement of Vice-Admiral von Trotha that it never occurred to a

submarine commander during the war that, after the war, he could be punished for acts committed in the execution of what he conceived to be his duty. Although only an almost negligible number of men were convicted, I doubt very much whether henceforth those who engage in any future war will ever dare to advance such a plea.

But, even if individuals in war-time are not likely to be restrained by the lessons of the War Trials at Leipzig, these trials will surely have a considerable effect upon those who define the principles upon which war shall be conducted. The Germans who were condemned at Leipzig were really paying the penalty for the spirit of barbarism which had been so assiduously taught in Germany before the war. The military text-book writers of the future will not, I think, be likely to forget Leipzig and the principle which was there established. It is doubtful whether the demand that the War Criminals should be brought to justice came to any considerable extent from the fighting services. As I have said in the opening of this book, the demand came from an angry public; it was a popular demand for revenge, perhaps the most dangerous of all national passions. But whether the services were enthusiastic for the trials or not, I cannot help thinking that they, as well as the public, will benefit from them in the future. The very facts that these trials were conducted by a Civil Court, and that German

military and naval men were sentenced by it to share the fate of civilian criminals, will have great effect in establishing the supremacy of the ordinary law, and in checking military arrogance. This is a great gift to civilisation, and in this respect the Leipzig Trials did far more than could ever have been done, had the clauses in the Treaty of Versailles, with their proposed military tribunals, been put into operation.

I am convinced that the War Trials produced results of great political and ethical value, both at the time and for posterity. From this point of view I am convinced that the trials were successful.

Before endeavouring to show this, however, it is necessary to make certain upon what standard the trials are to be judged. If the object of the trials is held to have been revenge and the punishment of individuals, then the trials may have failed. If the object was to convince the Germany of 1921 of its crimes during the war, then again there was little success. While in Leipzig I read most of the comments in the German papers. The local paper, the *Leipziger Neueste Nachrichten*, is a Jingo organ of little importance in framing German public opinion. In it, of course, there was little trace of shame at the horrible revelations which had convinced the German Court. But even in influential organs I could find very little genuine regret. Thus after the conviction of Heynen, the *Deutsche Zeitung* described Heynen's conduct as perfectly

justifiable, and the comment in the *Lokalanzeiger* was in the same strain. The *Vossische Zeitung* complained bitterly at the severity of the ten months' sentence.

A more reasonable line was taken by the *Berliner Tageblatt*, which said that the German people had every reason to demand that those elements who brought the German name into such disrepute by their behaviour during the war should be tried for their offences. It condemned much of the criticism of its contemporaries as insulting to the Leipzig Court, " which has always been world-famous for its exemplary dignity and the justice of its decisions." In a similar strain *Freiheit* urged that Heynen's sentence was not too heavy " for a man who has disgraced the name of Germany." This journal complained that it was disgraceful that the War Criminals should only have been tried after considerable pressure from outside, and it maintained that German Courts should have voluntarily tried them long before. The Socialist organ *Vorwaerts* said that there were two classes of War Criminals, " wholesale " and " retail." Heynen, it said, was a " retail " criminal and his case was unimportant; the real punishment should fall on the " wholesalers," amongst whom it included General von Fransecky. *Vorwaerts* condemned Heynen's conduct, but was most bitter against " the old system which brought about and

carried through the war." *Die Rote Fahne* (The Red Flag), as might be expected, denounced Heynen's sentence as ridiculously small and entered into a violent tirade against the entire Prussian system—this despite the obvious kinship between the doctrines of General von Fransecky and those of extreme Communists.

Public opinion is often reflected best in the humorous press. In its issue of 5th June, 1921, *Kladderadatsch*, a comic, but coarse, illustrated weekly, published a poem called " Judgment," in which it was said that any war crimes by Germans paled before the alleged sufferings of captured Germans at the hands of the soldiers of the Allies. This poem suggested that at the final Day of Judgment it would be " War Criminals " from the armies of the Allies, and not Germans, who would be condemned. In the same journal was also a bitter, but amusing, skit upon the complaints made by British ex-prisoners about their treatment in prison camps. Thus in an imaginary scene before the Court " Mr Drag Swine " complained that " at our first breakfast there were no eggs and bacon. As I did not know the German language, I could not lodge complaints, so I drew the accused's attention to the matter by kicking the seat of his trousers."

As the trials proceeded, there were a few mild expressions of regret, even in Germany's " Jingo " journals. Thus after the *Llandovery Castle*

verdict, the *Leipziger Neuste Nachrichten* said: "We must deplore the conduct of Patzig. It throws a shadow over the splendid deeds of our navy." But it refused to accept the finding of the German Court that the hospital ship was being properly used.

The line adopted by many individuals to whom I spoke, as by many of the newspapers, was, "All this may be true and we deplore it, but why should only Germans be tried for their war-crimes?" Day by day the newspapers published counter-lists of alleged atrocities by the Allies. Most of these were charges against Frenchmen; the "Baralong" case was almost the only one charged against England. I argued this point with several fair-minded Germans, and could see how deeply they felt the apparent injustice of this "one-sided justice."

But the answer was easy to give. War and individual atrocities are probably inseparable, but only Germany made a system of atrocities. The speeches of General von Fransecky, the military expert, and of Admiral von Trotha justified this "one-sided justice." It was in the endeavour to destroy this abominable exaltation of brute force that the Allies insisted upon holding these trials, and the proceedings at the trials justified them. The doctrines expounded by General von Fransecky and Admiral von Trotha remain the greatest enemy of Germany and of the world. Time

has yet to show whether they are being rooted out in Germany. I confess myself here an optimist, for I believe that they are, and that the next generation of Germans, freed, thanks to the Treaty of Versailles, from the barbarism of three years' compulsory service, will not tolerate the serfdom which the old military system of Germany demanded.

If the true object of the War Criminals' Trials was neither to punish the offenders nor to convince the Germany of 1921 of her crimes, what justified them? They were a protest against a national system of brute force. The trials were of value to civilisation because in them a German Court denounced and punished conduct of which the deeds of the convicted men were typical. It was not Heynen, Private Neumann, or even Dithmar or Boldt, against whom England was really proceeding. The accused were miserable creatures whose very names will be soon forgotten. They received their condemnation and, in the opinion of all Englishmen, less than their deserts, but the vital fact is that through them the system which bred them was condemned. While war passions are raging, men, and especially women, very naturally crave for revenge and individual punishments, but the hard saying of Tennyson about Nature can be applied to the question of War Criminals:

> "So careful of the type she seems,
> So careless of the single life."

There were several hundreds of names on the Allies' lists of War Criminals. Only a few of these men were convicted. But this is in accordance with the laws of life. To quote Tennyson again:

> "And finding that of fifty seeds
> She often brings but one to bear."

There probably never can be a general meting out of justice after a war. Even if there could be, would the sufferings of the injured be really assuaged? What matters is that the system which enabled these sufferings to be inflicted should be condemned in the eyes of the world. Was it not better that this condemnation should come from those who, being of the same nation as the criminals, must bear a special responsibility for them?

In my view the object of the War Criminals' Trials at Leipzig was to establish a principle, to put on record before history that might is not right, and that men, whose sole conception of the duty they owe to their country is to inflict torture upon others, may be put on their trial. As a result of the Leipzig Trials the fact is now on record that German soldiers and sailors have been put in prison by their own countrymen, who acted through no slavish coercion by a successful enemy, but because their consciences were outraged by evidence which their honesty forced them to admit. History will pay far more attention to sentences on German soldiers and sailors

of six or ten months' imprisonment, passed by a German Court, than it would to far longer sentences passed by " military tribunals " of the " Allied and Associated Powers."

No one who was in touch with Germany or Germans in 1921 could have failed to see that the reputation of England then stood very high in Germany. Some will regard this fact as proof that England was disloyal to its war-time convictions and to its quondam Allies. I regard it as the most hopeful proof of our country's common sense and instinct for statesmanship and fair-play. The opening of the War Criminals' Trials coincided with the British Prime Minister's strong speech about Silesia, in which he said that England would enforce the Versailles Treaty where it favoured Germany just as sincerely as where it was to her disadvantage. British policy was fully in accordance with these sentiments, as subsequent events showed. It is by such policy that England has gained her great reputation among the nations of the world. There can be no doubt that the War Criminals' Trials contributed something also to making Germany realise the real nature of her one-time enemies, even if they did not make her realise at the time how black her war record is. The conduct of the British Mission, which I have described in Chapter II, created a very deep impression in Germany. The witnesses, no less than the lawyers, stamped their personality upon

both Court and public. They will be remembered long after the remnants who still mutter "Gott strafe England" have ceased to exercise any influence in German life.

I would conclude this book by recording a personal incident. After the last trial I was discussing matters generally with a high German official. We were talking about British policy as a whole, and he frankly said that England was Europe's greatest hope. Then we turned to the impression created by the British Mission to the War Criminals' Trials. He was so genuine in his expressions of respect that I could not resist saying to him, "Do you not see now what a mistake your country made in regard to England before the war?" I pointed out to him that Leipzig had seen not a specially selected collection of Englishmen, but men of all sorts and from all parts, thrown together by the chances of war. He made no direct answer, but I think he has pondered over this point of view since we talked.

In order to convince Germany that she was mistaken about English policy and about Englishmen, it was not only necessary to resist her military onslaught and to defeat her, but, having defeated her, also to teach her what England and Englishmen really are like. The scrupulous care that was taken to have the War Criminals tried according to the highest dictates of justice did, I venture to think, do a great deal to drive this lesson home. The results

may not have been immediate, for in 1921 Germany was still smarting under defeat. But it is from such lessons that nations learn best the road back to civilisation and true progress, and every such lesson minimises the possibilities that history should repeat itself.

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